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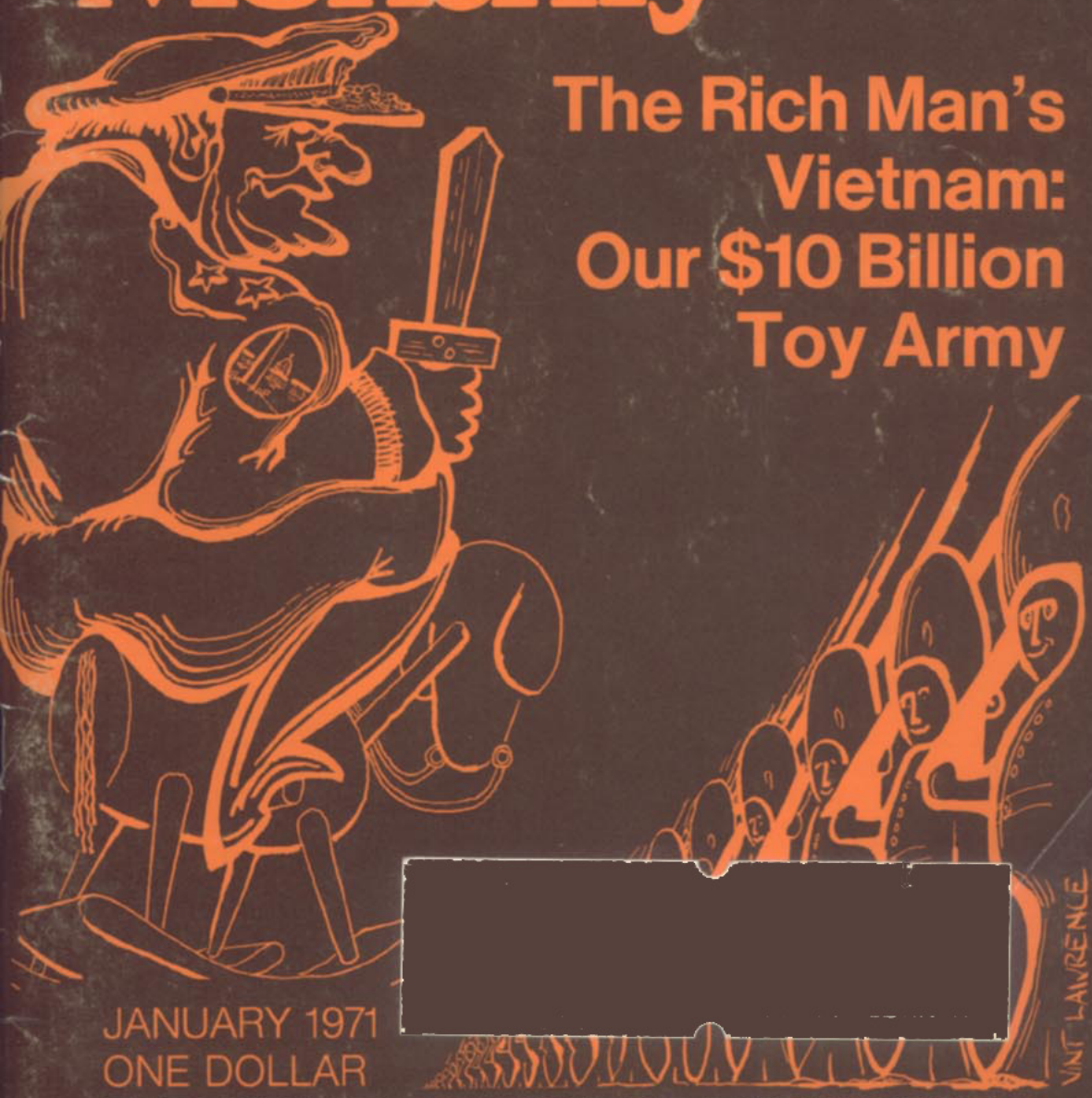

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VOLUME TWO NUMBER ELEVEN
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by Taylor Branch
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Letters

The New York Times Replies

Your article ["The New York Times as Oil Lobby," November] makes a large point about the lack of balance in the coverage of the oil industry, but it does so with a lamentable lack of balance of its own. Apparently no attempt was made to check the files of The Times to see how many articles against the oil lobby have appeared in the Financial Section and other parts of The New York Times.

Worse still, after a careful reading of William Smith's original article last July, I am convinced that Mr. Karp distorted what Mr. Smith wrote. He also, from what Mr. Smith says, distorted and took out of context what Mr. Smith said to him directly.

I am not certain if Mr. Karp had a preconceived goal in mind when he undertook the writing of the article, but what appeared in print certainly gives that impression.

SYDNEY GRUSON
New York, N.Y.

Mr. Gruson is assistant to the publisher of The New York Times.

The editor replies:

Mr. Gruson's response reflects the same kind of unspecific defensiveness that many government bureaucracies employ to cover up their mistakes, rather than the forthright admission of error that *The Times* would agree is needed both in government and in the press.

Mr. Gruson suggests that if we had gone back into *The Times'* files, we would have found articles critical of the oil industry and its lobby. What past articles have to do with Mr. Smith's recent inaccuracies is not known. Mr. Gruson asks a great deal from a *Times* reader, who picks up the financial page expecting an objective, or at least accurate, news story, and then is required not only to understand that the story is distorted to favor the industry, but also that the distortion is balanced by anti-industry stories that have appeared in the past.

Mr. Smith's bias in this case was as well-timed as *The Times'* eight-column play of the story was bizarre. The story appeared during a Senate debate on the inclusion of oil import quotas in the Trade Bill. Pro-oil Senators used the story as proof that the industry needed high quotas.

The direction in which Mr. Smith's overall coverage of the industry leaned during the last year can be best illustrated by the following press release, from the public relations newswire:

New York, Nov. 16—William D. Smith, a financial writer for The New York Times who specializes in coverage of the petroleum industry, tonight received the second annual Milburn Petty Award for "Outstanding Journalistic Achievement."

The award is given jointly by the Association of Petroleum Writers and the American Petroleum Institute. It is named for the founding editor of the Oil Daily, a leading industry trade publication.

The award was announced at the annual dinner of the Association of Petroleum Writers in the New York Hilton Hotel. Making the presentation was Thornton F. Bradshaw, president of Atlantic Richfield Co.

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The Ordeal of Legal Services: How Poor People Won in Court But Lost in OEO

by Taylor Branch

At 6:30 p.m. on November 20, an unlikely group of four people assembled in Washington for an important ceremony regarding the Office of Economic Opportunity's Legal Services Program of representation for the poor. Donald Rumsfeld chaired the meeting from his position as director of the anti-poverty agency, a post which he had accepted in May of 1969 after much cajoling from President Nixon and the Moynihan wing of the White House. The oddity of Rumsfeld's leading the charge against poverty has frequently been noted by writers who recite his moderately conservative record as a Republican Congressman. There is room to muse about the versatility of a man like Rumsfeld—who could become OEO's leader after voting against the original Economic Opportunity Act of 1964, who fights poverty and still comes on like a stylish version of his President, and who represents the poor from a background (Princeton '54, Congressman from a posh Illinois district) which finds them distant and hard to understand. Rumsfeld was attended at the meeting by Deputy Director Wesley J. Hjornevik, a NASA veteran, and General Counsel Donald Lowitz, an attorney in an established Chicago firm—two more strange officials for

Taylor Branch is a managing editor of The Washington Monthly. *His complete and fully documented report from which this article was taken is available on request.*

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Frank Jones and Terry Lenzner at press conference after they were fired.

UPI Photo

even a low-profile cruise against poverty.

The purpose of the gathering was to fire Terry F. Lenzner, Director of the Office of Legal Services and briefly the fourth participant in the meeting. He also seemed out of place —the 31-year-old product of the Eastern stream, Exeter, Harvard, Harvard Law School, captain of the Harvard football team, and widely touted as Rumsfeld's man after he came to OEO (on Bastille Day, 1969) as the Director's first major appointment. But apparently Lenzner had gotten religion about the five-year-old Legal Services program, whose nearly 2,000 lawyers in 850 offices across the country operated on a congressional mandate "to further the cause of justice among persons living in poverty by mobilizing the assistance of lawyers and legal institutions and by providing legal advice, legal representation, legal counseling, education in legal matters, and other appropriate legal services." It was, in short, a very legal program, and yet Lenzner's management policies had produced considerable political friction within OEO. "Every time he came up here with a problem, it was an urgent matter of principle," said an OEO official close to Rumsfeld, "and there was no give in his position. His relationship with Don deteriorated over time, until there was great mutual suspicion between Lenzner's office on the sixth floor and the Director's on the eighth. It was useless to work together any longer."

Rumsfeld told the press that his two former employees had become "either unwilling or incapable" of administering the Legal Services program effectively and that he had lost confidence in them. He gave assurances that the ousting of Lenzner and

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Jones would not harm the program, emphasizing his record of commitment: the Legal Services budget had risen from $46 million in fiscal 1969 to $53 million in 1970 to requested $61 million in 1971; the caseload had risen from 610,000 in 1969 to a projected 1,200,000 in the current year; and the cost per case had declined steadily from $97 in 1967 to $51 in fiscal 1971.

Director Rumsfeld took the high road in public discourse, but a fierce political battle was nevertheless kindled by the Lenzner-Jones firing—a confusing snarl of disputes involving everyone from prestigious lawyers to obscure bureaucrats and camera-ready politicians.

OEO employees commenced full-scale bureaucratic warfare over who had control of the Legal Services program complete with memo-stealing and one reported case of a sawed filing cabinet in Lenzner's office. On the outside, the dispute over who was hurting the program escalated into a major political battle, with seconds in both camps and strong partisan overtones. Like most scraps within the government, the issues are complicated enough that most people, on ideological instinct, feel constrained to choose sides early with a meager grasp of the facts involved. The bar, the Congress, the OEO bureaucracy, and public opinion have all split, as the bruises are traded in the open over Legal Services.

The outcome of the scuffle is important to the poor and those who care about poverty or are paid to care about poverty, for the work of the poverty lawyers has been a rare, multi-faceted success in the war on poverty. Legal aid is a profoundly conservative program, since the lawyers can do nothing for the poor without first convincing a judge of their case. They are impotent without written sanction from the robed men who have passed so many societal screenings for undignified quirks that the establishment itself must seem a little offbeat to them. And the lawyers in Legal Services have to accept these ground rules and the lofty courtroom atmosphere before they even begin. At the same time, Legal Services employees pontificate about professional standards, guard the attorney-client relationship from besmirchment at the hands of "lay" people, and call other law school graduates "Esquire" in all their letters.

Despite all these neutralities and the firm legal gaze back toward precedent, the poverty lawyers have been winning an extraordinary number of cases. Their successes have placed the squawking defendants—typically, landlords, government agencies, and corporations—in an awkward position. They must either accept the justice of the courtroom outcome produced by two well-represented adversaries contending before the law, or they must argue that the courts are biased in favor of the poor when the poor are represented and that justice is better served without poverty lawyers. The first option seems reasonable, but uncomfortable for the defendants, as it leads to the disturbing conclusion that many poor people must now be on the blunt end of justice. The second option not only seems unlikely but also leads to the non-establishment conclusion that society's pillars need drastic reform. Feeling a simultaneous need to uphold these pillars and to avoid being hurt by them, most defendants sidestep the dilemma by charging the poverty lawyers with fomentation, character deformity, and grandstanding—in other words, by politicizing the legal question.

There is an additional element of the fight over Legal Services which makes the outcome important—the poverty lawyers have not only been the most effective of all the efforts in the war against poverty but they have also offered new hope in the general struggle against unresponsive, unaccountable bureaucracy. Faced with an inert government agency sitting expansively on a real problem that touches peoples' lives, a poverty lawyer could simply file suit for court-

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ordered relief from such illegal inaction—complete with heavy contempt sanctions for defendants which still failed to act. Thus, he could begin to control the bureaucracy—something that neither Congress nor the White House have been able to accomplish. He could independently make waves and cause change without going through mounds of red tape, establishing a new program, or building an unwieldy organization. He could make the bureaucracy abide by its own rules without having to become a bureaucrat himself, with the attendant risk of being absorbed. In this sense, Legal Services provides the freshest idea yet in the critical task of bludgeoning governmental institutions into responsiveness. Poverty lawyers have brought more than 100 suits against federal agencies and countless more against state and local governments. They are, therefore, controversial, but they are indeed potent weapons against both poverty and sleepy entanglements in government.

This is the context of the Lenzner-Jones firings and of their rifts with OEO Director Rumsfeld. The controversy is important because the gulf between the two parties and their respective supporters is so wide and because the embattled Legal Services program is such a promising segment of the movement for social justice.

On his first day of unemployment, November 21, Terry Lenzner publicly accused the Administration of watering down the Legal Services program to please the political powers who opposed it:

> We believe that poverty lawyers must provide the best advocacy possible—advocacy that is unconstrained by fear of antagonizing powerful interests. We believe that the poor deserve lawyers who protect their rights with the same vigor and concern that is expended by private lawyers on behalf of corporations and the well-to-do.

Frank Jones made his point in the straightforward, right-on style that symbolizes the chasm between Rumsfeld and his former employees:

> There is something dishonest, immoral, and possibly illegal about pretending to be concerned about the poor as Mr. Rumsfeld does on the one hand, and using his position

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and resources as Director of OEO to further his own political end and the careers of politicians whose interests are diametrically opposed to those of the poor.

These charges were echoed in the unanimous protest statement of the 10 Legal Services regional directors and the national staff—an unusual show of solidarity in a government agency, where survivors usually muzzle themselves to protect a shot at the spoils.

The Washington Post and *The New York Times* dived into the fracas on Lenzner's side, editorializing against the creeping politicalization of Legal Services. Along with a promise of a Senate investigation, Senator Mondale issued a chastisement of Rumsfeld for the firings and for the deceptive regionalization of the program. And Senator George McGovern told the Senate on November 23 that Rumsfeld had squeezed one of the last pockets of social commitment from the Administration, leaving only a few people and large doses of public relations to smooth over the power politics:

> Lenzner and Jones have now joined the long list of persons with too keen a sense of integrity and justice to be allowed to reside in this Administration—Leon Panetta, James E. Allen, John Knowles, and many attorneys within the Civil Rights Division of the Justice Department.

Rumsfeld is rumored to have been both surprised at the intensity of the reaction to his gear-shifting in OEO and angered by the piercing accusations of insincerity directed against him. In response, he stressed the enormous progress of the Legal Services program under his guidance and denied any political compromises of its independence.

Rumsfeld also went on the political offensive by emphasizing through his aides the details of three cases in which he charged that Lenzner and Jones disobeyed his orders by supporting controversial programs that were in violation of OEO guidelines. Each case had a political message beyond the administrative technicalities, as the Legal Services programs were linked to the representation of the Black Panthers and SDS in New Orleans; the "voluntarily poor," hippie-type distributor of an underground newspaper in Dallas, which once featured the photograph of a nude male; and a group of middle-class, non-poor, government employees in Los Angeles. For those who were not convinced of the guideline violations or of the evil of representing these people per se, a more sophisticated argument was advanced, namely, that Lenzner and Jones were blind to the political delicacies involved in selling the legal services idea to the masses. The firers characterized the firees as a bit swim-headed, naive, and full of that save-the-world-quick purity which plagues good government.

It must have been difficult for Rumsfeld to "go public" with detailed allegations against one of his own programs, in view of the obvious risk that the spicy stories would promote political sniping from all directions—the kind of publicity which hurts appropriations. He could have protected the Legal Services program by maintaining that the firings rose simply from a personality clash and a breakdown of the working relationship. He might have declined to discuss the specifics of the Office of Legal Services for fear of exposing his agency to a public brawl which would hurt the OEO program and budget. But instead of stoically absorbing the Lenzner-Jones attacks and passing them off as the emotional parting shots of derailed bureaucrats, Rumsfeld elected to meet them head-on and counter-attack with the Panther-SDS-hippie buckshot. "Most people and many members of Congress won't remember the alleged guideline violations or who comes and goes as Director of Legal Services," said Senator Mondale. "All that will stick is the link between Legal Services and the

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unpopular."

Perhaps Rumsfeld felt that he had to answer the statements accusing him of a commitment gap, or maybe he was personally ruffled by Frank Jones' charges that he consorted with racists and bigots. In any case, he responded with the Panther medley, which may win him popular support against Lenzner but at the same time sacrifice support for the very idea of legal services—what with radic-lib lawyers, long-haired clients, militants, and all.

In the New Orleans case, OEO spokesmen charged that Lenzner had mishandled the disciplining of the New Orleans Legal Assistance Committee (NOLAC) for its violations of OEO guidelines. NOLAC, it was said, had represented the Black Panthers in criminal cases, non-poor SDS members, and a pornographic underground newspaper called the *NOLA Express*. In early October, Lenzner found that NOLAC was representing indigent Panthers, but not in violation of the guidelines, except for one case in which a lawyer represented Panthers at a criminal arraignment (he was suspended from NOLAC the same day). He also found that one NOLAC attorney had in fact represented two SDS members the previous April, without filling out the proper indigency forms. Filling in for a friend, the NOLAC lawyer had appeared as the attorney of record in a one-day hearing. Lenzner ordered such representations to cease, but he could take no action against the guilty attorney since he had left NOLAC four months earlier. NOLAC had never represented the pornographic paper in any suit. Finally, Lenzner found that NOLAC was involved in 18 criminal cases (of 1825 active ones) other than those criminal categories explicitly approved by OEO. He ordered NOLAC to withdraw from them, even though OEO's General Counsel had approved the current NOLAC work program, which stated the intention to become involved in such cases because of special problems in New Orleans criminal representation.

Lenzner was also accused of mishandling a Dallas incident, involving the representation by attorney Ed Polk of Brett Stein, the 27-year-old publisher of an underground newspaper, *Dallas Notes*. Its June 3 issue had featured several photographs of a nude man in a Dallas municipal parade and a story about a Jack Anderson column which accused Congressman James Collins (R-Tex.) of accepting kickbacks from people he employed. Apparently, Collins found both the pictures and the story obscene, and he complained to OEO that Stein was ineligible for Legal Services representation because he is "voluntarily poor." Stein's only income is $100 a month from his paper, although he is a college graduate and the son of a wealthy businessman. Lenzner inquired into the case upon Collins' request (as well as requests from Senator John Tower and Congressman George Mahon, chairman of the House Appropriations Committee) and received from Polk the defense that the guidelines on voluntary poverty are hopelessly vague, prohibiting representation of people who are voluntarily poor "without good cause," and that the *Dallas Notes* was distributed free to poor people and carried poverty notices, services which no other Dallas paper would provide. Since the Stein case ended in early July, Lenzner took no action; but he requested a more specific definition of voluntary poverty from the General Counsel's office, and this revision is still being made.

In Los Angeles, the Western Center on Law and Poverty was accused by Senator George Murphy of representing a dozen financially ineligible employees of the California youth corrections department in a civil action against the department. The Western Center defended its action by arguing that its guidelines allowed such representation if financially ineligible clients were first turned down by

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three private attorneys from the local bar's referral service, a procedure which had been followed. The Center also said that the cases were directly related to poverty because they arose from disciplinary actions taken against the youth department employees for protesting the treatment of the youth wards, mainly poor, in California's correction centers. Lenzner found their case persuasive in view of the guidelines, which he said OEO should tighten up, but he later ordered Western Center to drop the cases anyway, which was done.

On October 12, Lenzner received a copy of three memos from the OEO General Counsel's office to Rumsfeld, recommending suspension of the Dallas and New Orleans programs and a strong "show cause" order to the Western Center. Each memo was accompanied by an implementing letter already drafted for Lenzner's signature. Lenzner himself was surprised by the abruptness and indirection of this procedure, and he objected that each project should prepare a full written report before such stern measures would be justified.

The internal debate over these three cases, which Rumsfeld used to illustrate his impossible management problems, created an atmosphere in which the Office of Legal Services felt ulterior motives blossomed on the eighth floor. According to Lenzner, Rumsfeld summoned him shortly after the October 12 memos and outlined the plan of attack. Lenzner recalls that he wanted three things: a notice of suspension or at least a harsh reprimand to all three projects, a letter to every Congressman and all 265 Legal Services grantees announcing the action as a "signal" about Legal Services, and a press release to be issued and attached to all the letters.

Lenzner won his argument against the blanket letters, and "interested" Congressmen were merely informed of the actions. The press releases were compromised into press statements, not issued but made available to the press upon request. And the projects were not suspended, but sternly advised of the charges against them and ordered to produce explanations or else.

The New Orleans, Dallas, and Western Center cases, upon review, do not seem to be critical turning points in the relationship between Rumsfeld and the Office of Legal Services. The specific charges of regulations violations leveled at Lenzner and Jones are minor in the NOLAC instance, dubious in the Polk-Stein case, and ambiguous at the Western Center. The political content of the cases was the most important element of the public rationale for the firings anyway, and Lenzner feels that the full array of targets was no political accident—the Panthers, SDS, pornography, and hippies. "Don knew there was an election coming," said Jones, "and he wanted to get the message out that OEO didn't like radicals either."

"I think he had already decided to fire us," Jones observed, "even though he never said flatly that he was dissatisfied with our work." "Things had been sour for some time," echoed a Rumsfeld aide. They had gone bad over the previous year, as a few case studies should indicate.

The Backlash of Poverty Law

Peter O'Connor, deputy director of the Camden Regional Legal Services program, acknowledges that his law reform activities have put the Camden office in very hot water over the past year. He reeled off four cases which he thought had disturbed local officials enough for them to try to slash his program.

- a successful suit against the Camden Board of Education, seeking a hot lunch program for all the 31 schools instead of selected ones.

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■ *Ott v. Nardi*, a successful suit against the city which blocked the construction of a highway through a poor neighborhood.

■ a pending suit against the Camden Police Department for "destroying the garment factory of the Black Peoples Unity Movement with sledge hammers and other implements."

■ a federal suit seeking a permanent injunction stopping all urban renewal funds from coming into Camden until the city takes action to provide citizen participation in planning, construction jobs for poor people, relocation housing for displaced people, and low-income rather than middle-income replacement housing.

"We win these suits because the courts determine that we are often right," said O'Connor. "I mean the point is that they're just shafting people. I could handle 500 divorces and nothing would happen, but as soon as you file a suit that touches the politicians' friends or graft, they go berserk."

Says Camden Mayor Joseph Nardi, of *Ott v. Nardi*:

"In my opinion, Legal Services has been nothing but a hindrance to progress in our city. Those people are just filing whatever suits they want to, and the only purpose of bringing the suit is to get the publicity, to inflame the community, with the ultimate purpose of destroying the city. . . .

"You would have to live it to truly experience it."

The Legal Aid Society of Mecklenburg County in Charlotte, North Carolina, was under criticism within the Office of Legal Services almost immediately after it opened its doors in September, 1967. The 1968 evaluation report was quite negative, chastising the program for a low caseload volume, which the evaluators felt grew out of the society's downtown office in the prestigious Law Building.

The October, 1969, evaluation was almost equally harsh on the program's commitment to the poor and on its vigor in seeking to use suits to make inroads on Charlotte's poverty. The major exception was the performance of staff attorney Martin Miller, who had opened a separate office in the poor section of Charlotte, and who was developing a large caseload from the surrounding neighborhood, including some test cases. In *Tucker v. North Carolina National Bank as Trustee*, for example, he established a defense for tenants against eviction, on the grounds that, according to state statutes, the housing was "unfit for human habitation." The evaluators found the board policy and the downtown office negative, the Miller office and Miller involvement positive, and called for more of the latter.

On January 7 and 16, 1970, Miller filed two lengthy complaints in United States District Court against the Charlotte Police Department on behalf of several clients, all poor and black. The complaints alleged repeated instances of forced entry, destruction of property, harassment, and midnight searches by policemen without warrants or reasonable cause. Miller sought injunctive relief against the practice and $100,000 in punitive damages.

These complaints caused an uproar in the city of Charlotte and a sharp reaction from Legal Aid Society board president Alvin A. London. Miller, who now lives in Washington, recalls that "Mr. London was damn mad about the suits against the police. He said, 'In Charlotte, you don't sue the police department.' Then he told me to withdraw from the suits. I think he has about as much feeling for the poor community as one could expect to have from the ninth floor of the Law Building."

The Office of Legal Services in Washington investigated the Charlotte situation after Miller's cases received wide press coverage and found that London was not only applying political restrictions to the staff attorneys but also running the board of directors improperly. On February 27,

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OLS forwarded its evaluation report to London with an accompanying letter advising him that his grant would be cut off unless the board agreed by March 15 to cease interference with staff attorneys beyond the maintenance of eligibility requirements and professional standards. That same day, London convened the personnel committee of the board, which he had appointed a week earlier, and fired Miller. Then the politics began.

After London wrote Lenzner's office on March 12 that he could not comply with the February 27 conditions pending review by the North Carolina State Bar, Lenzner recommended to Rumsfeld on April 1 that the program not be re-funded and that other "vehicles" be explored for the provision of legal services to the poor in Mecklenburg County.

Lenzner's recommendation did not sell, partly because of intercession on London's behalf by Congressman Charles Jonas (R-N.C.), who apparently took enough interest in the dispute to become identified with the grant. On May 15, Rumsfeld, who still denies charges of political interference in the Charlotte case, wrote, "Where do we stand on the Jonas Legal Aid Program?" Dick Cheney wrote Lenzner on June 2, in the midst of stalled negotiations: "Terry, you and I need to sit down and chat about Charlotte Legal Services at your convenience. Congressman Jonas called the Director again and we need to get squared away on what our position is so we can tell him the same story."

In between these two memos, Rumsfeld and Cheney met on May 25 with Legal Aid Society President London and Robert G. Sanders, president of the North Carolina State Bar, upon Congressman Jonas' request. London and Sanders are law partners, which is indicative of the close cooperation between the state bar and poverty law. According to a letter from Sanders to Rumsfeld dated July 7, the Charlotte lawyers were assured that the restrictions imposed on their grant by the February 27 letter would be "rescinded or withdrawn."

Lenzner, who obtained a copy of the Sanders letter on July 17, sent an angry memo to Rumsfeld protesting the whole procedure by which the Charlotte grant had been handled. It is clear from the memo that Lenzner knew he had been overruled on terminating the grant but thought that Charlotte's money had been released with instructions that the non-interference conditions be "negotiated" between the Legal Aid Society and the regional OLS in Atlanta. The Sanders letter indicated that Lenzner had, without his knowledge, also been overruled on the special conditions for the Charlotte grant.

In many other areas of the country—Chicago, Boulder, Albuquerque, Baton Rouge, Gary, Berkeley, St. Louis—the same kind of detail can be marshalled. In Volusia County (Daytona Beach), Florida, for example, the county bar association became extremely disturbed when a staff attorney named Tom Goldsmith filed suit against the local justice of the peace system, alleging that it existed mainly to help merchants and landlords collect from poor people without due process. When Goldsmith *won* the suit, the bar turned a scrutinous eye to the Legal Services program. "Before that suit, Legal Services had 90 per cent support among the bar members," observed one Daytona attorney. "But it changed everything. Lawyers have to look to their clients."

"All this talk of allowing lawyers to ferment turmoil sounds good in a speech," agreed Legal Services board chairman Bernard Strasser, "but you can't do it locally."

The local board proceeded to fire Goldsmith three times—failing on the first two tries because of sympathies for Goldsmith at an appeal hearing and because of intercession from the Atlanta Legal Services office requiring due process. When the severance was finally executed, OLS sent a telegram on September 2 requiring restructuring of the board by September 30

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as a condition for re-funding (the bar had almost twice the board representation required by Legal Services guidelines at the expense of poor representatives). Congressman William Chappell (D-Fla.) thereupon arranged for a Volusia County delegation to meet with Rumsfeld on November 6, without an OLS representative present. The delegation obtained a $25,000 interim grant to last until January 30, 1971. At that time, the bar association and the local Community Action Agency must present a proposal for a new board structure. Volusia County officials continue to bargain with the Community Action Agency, which is controlled by stubborn poor people, but they are taking no chances. A delegation of county commissioners has visited Washington to check up on the proper procedures for county authorities to take over a CAA. Led by Commissioner Dean Smith (brother-in-law of the Legal Services director who originally fired Goldsmith), the commission has already begun the takeover process, which will make the CAA more agreeable one way or another.

Instances like those described reduced the Rumsfeld-OLS relationship to one of bureaucratic guerrilla warfare long before the public debate over the dismissals. There were a few side issues to add to the friction, such as the Administration's political clearance system for all Lenzner's appointive positions in Washington and the 10 regional headquarters. Politics has always oozed forth in government employment, but the current system requires all nominees, down to the level of GS-9 (which begins at a $9,500 salary and is about the bottom level with any policy responsibilities), to survive a formal process of both local and White House clearance, often lasting for months. Anyone browsing in OEO files can come across passages like the following:

> . . .had to wait to get necessary support as he is a registered Democrat. . . looks pretty good at this point. They have received okays from Ralph Smith and Charles Percy, have gotten a letter from Ogilvie, and other support letters from the Director of the Bureau of the Budget, etc.
>
> This one may hang on forever.
>
> As he is a registered Republican, there appears to be no problem other than the normal delays involved in springing these clearances loose.
>
> Senator Tower's office has given "thumbs down" on this appointment. . . has made statements about the Senator in the past which he did not like.

But the major battle—which cut across almost all the disputes between OLS and Rumsfeld—involved "regionalization," or whether authority over Legal Services would filter out to the OEO regional offices. This fight has not yet been resolved and is a much larger issue than the Lenzner-Jones firing. The outcome, according to most knowledgeable sources, will determine the future usefulness of Legal Services programs, and the main new actor in the dispute is the American Bar Association.

Regionalization and the Bar

The American Bar Association has always been heavily involved in the Legal Services program, pushing to insure that professional controls over the operation were very tight. ABA officials made sure from the beginning that attorneys would constitute a majority of the governing boards for all local projects and that the organized bar would be consulted about all high matters of policy regarding the national program.

When the Nixon Administration came into office, the bar's remaining anxiety about Legal Services was that the grants were still being funded through local Community Action Agencies, the OEO "vessel" for all its programs. The bar didn't like that because laymen were often scratching around in the attorney-client relationship and interposing nonprofessional judgments about how much money the poverty lawyers should receive

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and what kinds of cases they should bring to trial. In Chicago, for example, Mayor Richard J. Daley is chairman of the board of the Community Action Agency (CAA), which sponsored Chicago Legal Services but placed it under intense political pressure not to bring suits against the city or otherwise irritate the mayor.

The ABA also resented the fact that the 10 regional directors of Legal Services were the employees of the overall OEO regional directors. Thus, at both the local and regional levels, lawyers and a legal program were being subordinated to a general political program controlled mainly by lay administrators. It was clearly an affront to the dignity of barristers everywhere, and President Nixon himself was sympathetic to the worries of the organized bar.

On July 3, 1969, an ABA delegation met with new OEO Director Rumsfeld to make sure of his commitment to the idea of separating Legal Services from ordinary antipoverty programs. And 11 days later, Rumsfeld announced the appointment of Lenzner as the first Assistant Director of OEO for Legal Services. The Office of Legal Services was made separate from and equal to the operative offices of other OEO programs, and its 10 Legal Services regional directors became the equals rather than the employees of the OEO regional directors. The OEO regional directors retained only a "ministerial" (for information only) sign-off on Legal Services grants. Local Community Action Agencies were to continue sponsoring the Legal Services programs wherever possible, but Rumsfeld made it clear that bureaucrats should not expect to be backed up if they tampered with Lenzner's operation. On August 11, 1969, President Nixon stated his approval: "The Office of Legal Services will be strengthened and elevated so that it reports directly to the Director. It will also take on central responsibility for programs which help provide advocates for the poor. . . . This goal will be better served by a separate Legal Services program. . . ."

Upon taking office, Lenzner began centralizing the Legal Services operation and, in effect, reducing the amount of administrative paperwork between his program and the other OEO offices. Generally, he was more successful at the regional level than at loosening the local CAA-Legal Services tie. The struggle there was a classic bureaucratic one, for the Community Action Agency administrator reports directly to the OEO regional director, who reports directly to Frank Carlucci, the Assistant Director for Operations in Washington and Lenzner's rival.

Local squabbles between CAA s and Legal Services programs were quickly translated into Lenzner-Carlucci battles in Washington, which were sometimes not successfully worked out.

In Chicago, the issue turned on political control; and Lenzner, after unsuccessfully trying to loosen Daley's hold on the program, proposed that Chicago's Legal Services be funded directly—bypassing Daley's CAA entirely. Carlucci thereupon produced fierce memos to Rumsfeld and Hjornevik opposing the move on the grounds that it would "defuse the Office of Economic Opportunity's management capabilities."

Lenzner won, at least temporarily, on the egregiously politicized Chicago program, but he and OEO were clearly on a collision path. OLS was moving to separate and invigorate its programs, stimulating more of the kind of poverty representation that would wound politicians—and OEO was simultaneously moving to increase state and local control over antipoverty programs and to "return the power to the states." Carlucci's chain of command was the most heavily politicized. His OEO regional director for the Western Region, for example, owes his job to Senator Hiram Fong (R-Hawaii), the deputy to Governor Reagan, and so on.

The poverty lawyers ran headlong

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Introduction by Richard H. Rovere

Contributors include Hugh Sidey, Bill Moyers, David Hapgood, Morton Mintz, Nick Kotz, Russell Baker, James David Barber, James C. Thomson, Jr., James Boyd.

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into a phalanx of politicians and the established interests upon which they float. These forces produced the Murphy Amendment and its House counterpart (Quie-Green) to nestle Legal Services under the wings of state governors. When these efforts failed in late 1969, pressures began building to accomplish the same goals administratively by reversing the course that Lenzner had just launched with his joint Nixon-Rumsfeld blessing. Ironically, plans arose to decentralize Legal Services in early 1970—even as Lenzner's office was putting the last administrative touches on his independent OLS structure, trying to get out from under the restrictive Community Action Agencies, eliminating bureaucratic snarls with the OEO regional directors, and otherwise irritating Frank Carlucci. In February, 1970, while Lenzner was making speeches about the need to slap more poverty lawsuits on unresponsive government agencies, Hjornevik memoed Carlucci that "the Legal Services program will be decentralized again in fiscal year 1971." That same day, Carlucci reiterated to Rumsfeld his "strong opinion" that OLS projects should be direct-funded only, in essence, when local CAAs are nonexistent or when the CAA itself "does not want to be the grantee."

The "regionalization" or "decentralization" question was hotly debated within OEO during the spring of 1970. And when Carlucci lost on the Daley Legal Services issue, he renewed the push toward regionalization. On June 8, he wrote Hjornevik, "If decentralization of Legal Services is to take place in FY 71, as previously decided, it is imperative that we begin to plan an orderly transfer to the Regional Offices immediately."

Lenzner continued to lose ground across the summer against a Rumsfeld-Hjornevik-Carlucci solid front in favor of "re-regionalization," until finally he requested a summit conference with Rumsfeld and Hjornevik. This meeting took place on August 24. Evidently displeased with the proceed-

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ings, Lenzner wrote Hjornevik with a very unbureaucratic suggestion:

> Your plan amounts to the subordination of all Legal Services personnel to regional directors and the Office of Legal Services in headquarters being subordinated to the Office of Operations. As I said yesterday, I would strongly recommend that if your plan is adopted you abolish the unnecessary expense of continuing a headquarters Office of Legal Services.

Long before his position decomposed to this point, Lenzner had appealed to his principle source of outside clout, the American Bar Association.

There are many aspects of the $61-million Legal Services program which draw the admiration of the legal profession, and high among them ranks the fact that most of the money goes to lawyers. "Also, every time a poverty lawyer files a suit," observed one member of the Florida bar, "another lawyer gets paid by the government or a company to represent the other side. A shrewd lawyer will vilify the ideology of the program but defend its independence on professional principles." Since Legal Services also siphons off much court-appointed attorney time which was formerly donated, it adds up to a sizable net gain for the collective legal pocket, especially for a young federal program with high growth potential.

Beyond these gritty financial details, intelligent lawyers recognize the growing pressure in each new graduating class for *pro bono*, public interest work—often concentrated among the highly talented but socially committed lawyers whose sense of purpose receives no throb from real estate dealings or the prestigious corporate firm. There is an obstinacy about these views which teaches prudent bar members that to some extent the government must pay for these demands, or the firm will have to.

But the time-worn principle upon which the ABA relies to unite its membership in protection of independence for Legal Services is the proposition that the attorney-client relationship shall not be violated. This means that no layman should interfere in the sanctum sanctorum of the law or in any decisions grounded in the law and properly made by lawyers, period. The principle here is in accordance with the prime maxim of all occupational guilds—that enlightened self-interest requires sealing the portals so that renegades will not commonize the profession and thereby make it cheap. The bar has established its proscriptions primarily by statute (that's why it's called the bar), but the fringes must be left to the Canons of Ethics and vigilant watch over the attorney-client relationship. This task is far above politics. It is the lifeblood of the attorney's distinction. It has been said that law schools merely teach their wards to "think like a lawyer," and that few graduates emerge from this process without a pulverized imagination—as if their zest for wondering had been strained through a cyclone fence to produce the iron latticework of interconnected syllogisms which lead methodically from the precedent to the possible. It may also be said that far fewer lawyers finish their training without an impregnable reverence for the attorney-client relationship.

Therefore, when Lenzner sent out the word that Rumsfeld, Hjornevik, and Carlucci were planning to decentralize Legal Services into the hands of politicians and lay administrators, the organized bar responded. Not all the members responded solely on the basis of professional protection, of course. In fact, many ABA leaders seemed motivated primarily by the desire to have the most vigorous possible representation of the poor and to preserve that representation from any threat, including those by lawyers, politicians or budget-cutters. For them, the choice of professionalism as the rallying cry was tactical, for professional integrity or sanctity from lay competition can stir even conservative attorneys who are philosophically opposed to the whole idea of poverty law.

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The use of legal professionalism by the supporters of a strong Legal Services program is similar to the strategy that liberals once used to sell foreign aid as gardol against communism. Those concerned about international poverty consciously determined that it was worth it to crow a little about stemming the tide and put up with large amounts of military aid in order to protect their development programs. Now Lenzner and the poverty lawyers, concerned about domestic poverty, are committing themselves to a kind of professional xenophobia and to the high principles of the legal guild in order to protect a crucial program. There is no question that the goal —protecting Legal Services from political control—is worthwhile, or that professionalism may be the only way to rally the crusty ABA around such an electric idea. But it is also true that more professionalism is precisely what the public interest does not need from the organized bar. The legal profession is already overprotected, inflated, and puffy—harboring for degreeholders many specialized functions that should be separated out, and claiming too much for the degree.

In order to protect their revolution for the poor from political interference, the poverty lawyers are willing to stand on the professional distinctions which unnecessarily restrict the main actors to the professional bar. Every intelligent attorney knows that most of the poverty lawyer's daily tasks—standing up to the landlord and city hall, securing divorces, threatening suit against crooked merchants, and so on—could be performed by large numbers of people, given certain aptitude and minimal but precise formal training. Most lawyers are slightly embarrassed to explain exactly what three expensive years of law school teaches on top of college or what the bar exam really measures, and it seems clear that the legal tariff needs lowering and rationalizing.

But most poverty lawyers apparently believe in their professional gardol, and it is definitely useful in the current struggle over Legal Services.

On October 5, John D. Robb, chairman of the ABA Standing Committee on Legal Aid to the Indigent, wrote ABA President Edward L. Wright as follows, zeroing in on the professional issue:

> I regard regionalization as an extremely serious threat to the Legal Services program. Essentially, it will transfer the administration of the program and the enforcement of its professional standards from Terry Lenzner, the director of the OEO Legal Services Program in Washington, to 10 regional OEO directors, eight of whom are laymen.

The National Advisory Committee to Legal Services, a bar group whose consultation with OEO is required by statute, met in Washington on September 11. A special subcommittee on regionalization was created to study the question, and the group produced a legally passionate attack on decentralization.

Rumsfeld's aides assert that the advisory committee is unrepresentative of the national bar, and they are probably right. In fact, they might well have a case for the proposition that the average American lawyer would like to see poverty law confined to the guild absurdity syndrome —in which non-lawyers would be totally banned from any position of control or authority over Legal Services in the name of professional integrity, and then the poverty lawyers restricted by the bar itself to those standardized service cases which any H & R Block trainee could handle expeditiously and to which professional standards are largely irrelevant. Certainly, many local bar associations have trampled all over the attorney-client relationship to hold Martin Millers and Tom Goldsmiths and other controversial upstarts in line.

But there is an alternative to this sort of disreputable opposition to Legal Services programs—Judicare. Having watched their medical brethren wash away fears of socialized medicine with Medicare and Medicaid money, many wise lawyers feel that

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they can copy the plan and have the government pay for private legal services delivered to the poor from the Law Building. Some lawyers have become enthralled with the analogy, and bar committees are currently studying systems of "legal check-ups," "comprehensive legal care," and "preventive law" for presentation to Uncle Sam. When the Legal Services program in Albuquerque announced under questioning that it would accept poor peoples' reasonable cases against the police department, the Albuquerque Bar Association persuaded the local united charities fund to withdraw its $25,000 contribution to Legal Services and set up a Judicare program—run, of course, by the local bar.

"John Robb is chairman of the ABA committee on legal aid and he unfortunately comes from Albuquerque," said attorney Charles Glass, who helped engineer the Judicare program. "He has never spoken for our bar association, which has repeatedly spoken against the Legal Services program. Our state bar is also in favor of Judicare overwhelmingly, and has sent resolutions to all New Mexico public officials. In fact, elections to the state bar often turn on that question." ("Yes, Judicare is a very live issue within the bar," sighed Robb.)

In the face of such internal schism, it took considerable courage for people like Robb to continue fighting for Legal Services. It was no longer like the good old days, or even the Murphy Amendment days, when the ABA could work up nearly unanimous hoopla in favor of its program—feeling positively liberal and unthreatened by it. Judicare and the increasingly controversial nature of Legal Services put the national ABA leadership in danger of losing its decidedly unradical constituency.

But after Rumsfeld testified before a Senate hearing chaired by Senator Walter Mondale on October 7 and 9, things looked so bad that ABA President Wright got heavily into the fight. Rumsfeld told the Senators that he had always intended the centralization of Legal Services to be "temporary," that decentralization was crucially different from regionalization, that he felt compelled to act not by Congress nor by the ABA nor by the President but by his own sincere belief in sending power back to the states, and that some sort of administrative change was in the wind but that no decision had yet been made. The Senators seemed puzzled by all this but definitely dissatisfied. Wright wrote Rumsfeld on October 16:

> On behalf of the American Bar Association and its Board of Governors, I urge you to reaffirm the independent status of the Legal Services program at all levels of administration within the agency.

Pressures continued to build on regionalization across the election period—until Rumsfeld announced, on November 14, "I have decided not to regionalize the Legal Services program." This startling reversal of trend was trumpeted in a press release for the November 15 Sunday papers. While the press speculated about the reasons for the reversal in Rumsfeld's thinking, OLS employees analyzed the memorandum he sent out on the same day as his announcement, stating, "While I am not regionalizing Legal Services, I am instituting new administrative procedures. . . ." These guidelines were spelled out in six single-spaced pages of solid bureaucratese—whose significance lay in the repeated provision that if one of Carlucci's regional directors objected to anything about a Legal Services project in his region, he could no appeal the issue to Carlucci and Lenzner. These two would have to agree or the decision would be made in the Director's office.

Because the OEO regional directors were certain to place conditions on Legal Services grants as "objections," and because Frank Carlucci would undoubtedly support the conditions of his men in any conflict with Lenz-

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ner, and because Hjornevik and Rumsfeld seemed predisposed, at the least, to sustain Carlucci in such conflicts, the OLS people calculated that they had been regionalized even as Rumsfeld was announcing that they were not. (Rumsfeld announced that the changes were merely administrative minutiae handed down in the constant search for "more effective coordination." Most reorganizations are announced with great fanfare in an attempt to convince the public that the government is making great strides toward the solution of a problem, when in fact the government has no idea what to do and reorganizes solely to appear vigorously on the move and to get more money. A few other reorganizations are announced as barely even news, simple coordinative adjustments—and that is usually when the heads roll and power shifts. This change was definitely one of the latter.)

Everybody concerned with Legal Services, of course, was up in arms about the November 14 guidelines. ABA President Wright came to Washington on Thursday November 19 for an emergency conference with Rumsfeld about them, a meeting from which Rumsfeld excluded Lenzner and Frank Jones. Wright asked Rumsfeld to suspend the new procedures until the ABA could study them and register its formal opinion. General Counsel Lowitz called John Tracey, assistant director of the Washington ABA office, on Friday morning, asking whether Wright could work up a statement for a joint press release about the meeting. Tracey, who had himself attended, replied that Wright couldn't say many glowing things at that stage, and, when asked for anything "positive," said that Wright would probably say that he had been pleased with Rumsfeld's repeatedly expressed commitment to Legal Services generally. Lowitz said that was fine, so Tracey drafted a statement, cleared it with Wright, and sent it over to OEO Friday afternoon.

"When I heard a few hours later that Lenzner and Jones had been canned," recalls Tracey, "I called Lowitz and told him to make sure that the Wright statement and the announcement of their getting fired would be separated so that no one would get the impression that Mr. Wright knew of the plans to fire them. Lowitz said of course they would be separate, that they were separate events on two different days, and so on. But the two releases were stapled together, and reporters got the idea that the president of the American Bar Association approved of what Rumsfeld had done.

"Everyone over in OEO from Rumsfeld and Lowitz down denies having joined those two releases, charging administrative error down the line. They even sent them out to all 265 Legal Services projects, with a telegram a week later apologizing for any false impressions given.

"To top it all off," continued Tracey, "Jack Rosenthal of *The New York Times* told me that he asked Rumsfeld how he could go through with the Lenzner-Jones firing in the face of opposition from the organized bar, and Rumsfeld said, 'You must not have read the joint statement.'

"Our position is that Rumsfeld can fire anyone he wants to, and we will try to work with him to salvage Legal Services. But he has certainly bruised the atmosphere between OEO and the ABA," concluded Tracey, with casual understatement.

The High Cost of Promotion

So Terry Lenzner and Frank Jones have left the Office of Legal Services and are now lobbying and pleading and pressuring on the outside to save their program from regionalization. It seems fair to say that Lenzner inherited a relatively complacent Legal Services operation from "the previous Administration," full of projects which were little more than patronage plans for local bar associations. ("We

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entered the program four years ago with the understanding that the bar would control the board," said Daytona Beach board president Bernard Strasser. "That was one of the big selling points. And if the bar doesn't run the program, what's the use of giving our time.") He took a program that was naturally improving and, with Rumsfeld's approval, pushed it—hard, very hard.

Legal Services will no longer be pushed like that, although Lenzner, the ABA, and Senator Mondale did engineer a repeal of the formal regionalization guidelines on December 14. There is no zeal in the program anymore. It is no longer in favor at OEO, and it has too many bureaucratic vulnerabilities. "There are many ways to gut a program," said a staff member. And the Administration has determined to find one for Legal Services.

Arthur J. Reid, a 41-year-old black Republican from Cincinnati, came down from the General Counsel's office to take over Lenzner's job and absorb the repercussions of the "terminations." "God knows it's been hell," he lamented. "I'm right on the hot-seat, and everybody thinks I had a hole in my head for coming down here." Reid's problems are complicated by the fact that Lenzner's staff considers him a kindly lightweight and an unassailable black figurehead who will preside over the demise of Legal Services or move on, depending on his orders.

Most people in the program foresee the regionalization of Legal Services—or some other form of its emasculation—and believe that such political control of the poverty lawyers would quickly restrict them to routine matters like divorce cases and garnishments and evictions and other nasty things that the right people have always expected happen to the poor. Rather than attacking poverty, these cases would remain its symbolic by-products which must be tended efficiently like everything else. You have to feel pretty guilty about controlling the poverty lawyers like that—if you are afraid that the poor might zap you in the halls of justice. But most politicans would have it that way. They would, in short, administer poverty for a slight government subsidy, and simultaneously enjoy the budgetary fruits of administration.

The poverty lawyers were not just helping the poor. They were forcing responses from that great enveloping blanket which is known as administrative government and which warms all our problems. They were beginning to act almost like a fourth branch of power kicking those huge agencies that murder equity and then bury the responsibility in a corridor somewhere while the PR men explain. Perhaps the thought of a single independent lawyer—totally unprogrammed and uncoordinated—standing there and causing change on the basis of principle was too much for the politicians, who are lost in the blanket, too. They have a place there woven together, along with the old differences between liberal and Republican and Democrat and conservative. Everyone has a spot to protect. There is little support for the idea of that independent lawyer any more, for he is out of style. And if the powers keep the poverty lawyer from suing city hall or HUD or HEW or the police department, Legal Services will itself be incorporated into the blanket and become another program with problems to protect and jobs to keep by not gouging its neighbors. If the control of Legal Services is mailed out to the politicians and bureaucrats and special interests one of the last best hopes and the best idea in the war on poverty will be absorbed into the great woolly fabric and wetted down. That is how it is.

Through it all, Frank Jones remains somehow optimistic. "I feel encouraged about the number of people who have spoken out about what they believe is happening to this program," he said. "When I traveled through rural Mississippi trying civil rights cases in 1964, the judges and

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juries ground up my clients time after time—even though I knew that any reasonable lawyer in the world would rule the other way. It seemed hopeless and useless. Only years later did I realize that the real significance of that year was the number of people who first began standing up."

And Lenzner: "I think the controversy over Legal Services is analagous to what happened in the Haynsworth and Carswell nominations, and that the public will again have enough sense to recognize a clear threat to the general interest. If so, I think we will have served some purpose." Perhaps such talk is sheer politics, but Lenzner clearly feels too right to be wholly disconsolate about his efforts. And he, like Jones, sees hope in the rank and file.

But what of Rumsfeld? Why did he, after earning wide respect for not dismantling OEO, part so unceremoniously with the Legal Services chief who accomplished precisely what Rumsfeld and President Nixon called upon him to do? Why did he, after building the Legal Services budget and repeatedly overriding gubernatorial vetoes of the program, move to gut the program so deviously?

Part of Rumsfeld's problem in dealing with the OLS staff flowed from the imperial flavor of his internal management. He seldom cultivated the feeling that *we've* got to sell our program to *those* people out there, and thus violated one of the first rules of bureaucracy. "What really made us angry was that he almost never acknowledged political pressures but tried to sell his plan on some twisted version of its merits," said Jones. "Rather than saying, 'Look, there is a political problem here and how can we solve it,' he would try to rationalize things on substance. Things got so bad that I would just sit in meetings and stare at Don when he started orating about poverty and why it urgently required that we re-fund Charlotte or reprimand Dallas or decentralize. He never had anyone around him who knew poverty. And I would just stare, knowing that his plan was plastered politics and that his oration was a fraud. And he knew that I knew. We never got along, actually."

One reason Rumsfeld gave less than a full boosting to OEO against its adversaries was that he concurrently held the positions of special assistant to the President with Cabinet rank, complete with a second-floor office in the West Wing of the White House. His allegiance was obviously divided—his programs were run out of OEO, but his *future* would be determined in the White House. There was a time when his function was to build a demonstrably good track record for his agency in order to dispel politically dangerous notions that the Administration would summarily dissolve antipoverty efforts. It was then that his sincerity and positive attitude about doing a good job for the poor was put to good use, and then that scores of prominent liberals could genuinely praise his efforts at OEO. (Among them, his wrestling friend Allard Lowenstein said in May, 1969, "I know he is interested, deeply interested, in doing something about poverty in this country. . . . He is intelligent, he has integrity, he is committed. . . .") But then there came a time when OEO was no longer a real image problem and could be run as a holding operation, freeing Rumsfeld for more important affairs.

He has been on the move this year, securing a position in the 8:00 a.m. breakfast group with five of the President's closest White House advisers —Haldeman, Shultz, Ehrlichman, Finch, and Kissinger. For about two weeks this fall, Rumsfeld was designated Republican political coordinator for the 1970 elections. (He was, perhaps fortunately for him, replaced by Finch when objections were raised that it might be unseemly for the antipoverty director to manage a political campaign, especially the one planned by the Administration in 1970.) He even obtained one of the coveted White House videophones, which allowed him to gaze at the other lucky

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owners while consulting.

Things looked good for Donald Rumsfeld—young, bright, loyal, successful at OEO, and a Nixon supporter long before the nomination in 1968. It was highly unlikely that he would sacrifice his prospects at the White House for a measly Legal Services program. It was perhaps painful to make the opposite choice, but there were compensations.

This decision does not make Rumsfeld unusual in the slightest, for most people spend their whole life working for smiles, grades, offices, certificates, awards, cheers, gifts, words, and votes of approval. And the fact is that all Rumsfeld's power and status and success depended on his receiving the approval of the President. Everything hangs on the chief's nod and his favor. As if driven by some neurotic cocklebur, most of official Washington locks its internal organs in place and positively drives for that high ground of the blessed, where the compliments are dispensed and people have so much attention paid to them.

In the political battles over the Legal Services program, Rumsfeld was obviously not going to adopt Lenzner's position and battle it out with the White House on behalf of his OEO subordinates. Nor could he even explain painfully that the nasty old White House politics must prevail over the clear justice of the OEO-Legal Services team. Rumsfeld became incapable of making these distinctions, for he had *absorbed* the Administration's politics to be more like them. In a sense, he had become Nixon to make sure he retained the chief's approval, and this made it much easier to fire Lenzner and Jones. It was required to retain voter approval. And it made sense for a Rumsfeld aide to say, "I don't know what Don will do now. He'll do what the President wants him to do."

On December 11, Nixon wanted Rumsfeld to move closer to him as a full-time Counsellor to the President. And Frank Carlucci—Princeton, Harvard Business School, career Foreign Service Officer on leave from the State Department, arch-foe of Legal Services, and architect of re-regionalization—would also be rewarded. The President wanted him to be the new director of OEO. As the President said, he "has done an outstanding job in that particular position and I believe in promoting a man who has done such a job to the top spot."

Of course, there is no such thing as the top spot. Even the President is still pushing upward, seeking broader and more lasting approval.

Rumsfeld, for his part, made a prophet of Senator George McGovern, who had spoken on November 23 of the Lenzner-Jones firing:

> I would imagine that now that he has performed the Nixon Administration's dirty work, Mr. Rumsfeld will be rewarded with a chair closer to the President, as was Robert Finch after he performed the coup de grace on James E. Allen, the then-Commissioner of the Office of Education. . . .

The timing of Rumsfeld's move was handy, as it removed him from OEO and out of congressional range for probings of his coup de grace and regionalization. These current politics require delicate footwork and eager soul-selling, but you may get a videophone when you really arrive. ■

Wally McNamee—Newsweek

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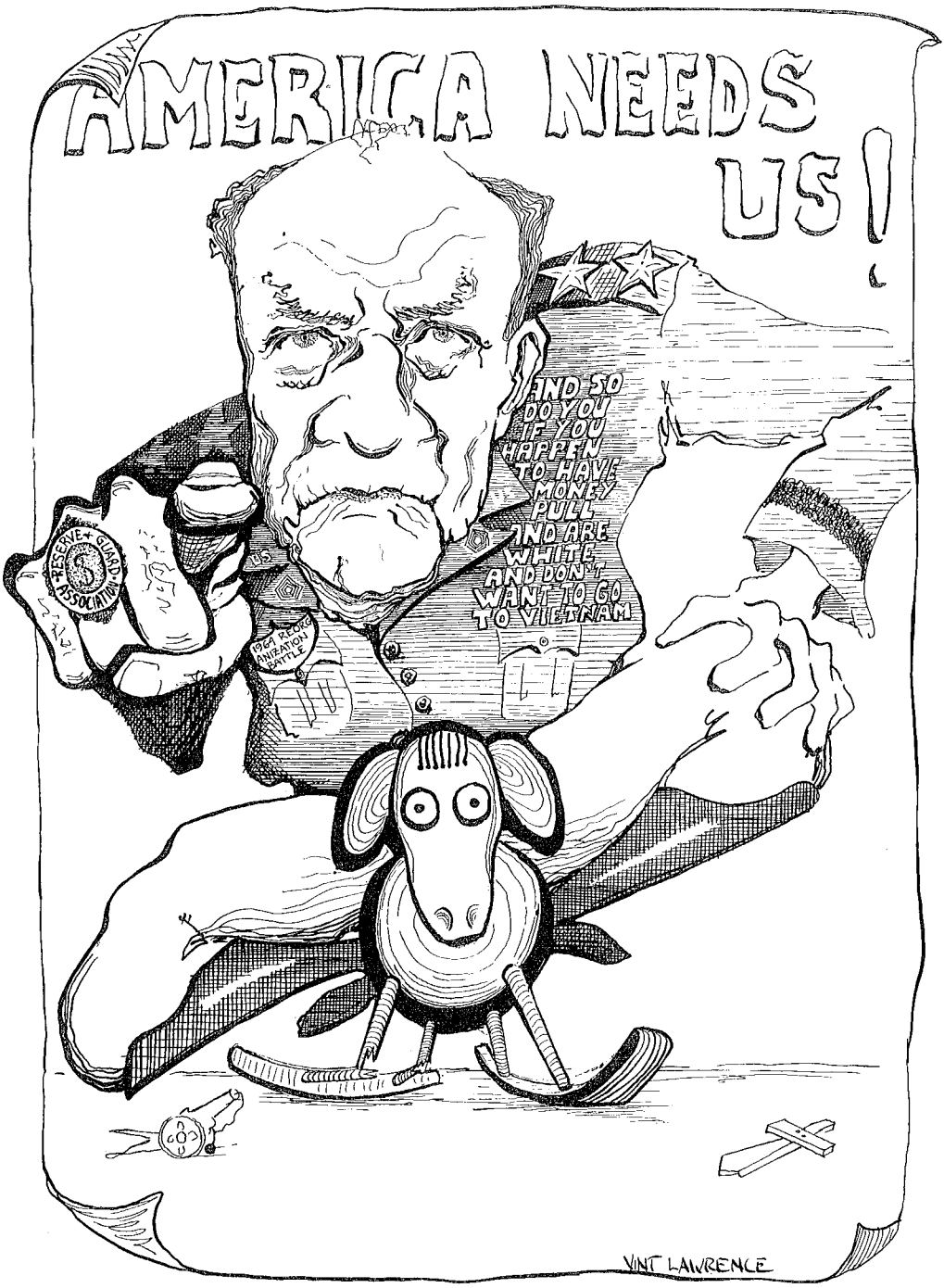

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Reserves and Guard: A More Selective Service

by Adam Hochschild

In the Civil War days, if you didn't want to be drafted, you could "buy a man" for $300 to take your place in the Army. You can also avoid the draft today, though things are more indirect—instead of paying $300, you can join the Reserves or the National Guard. As long as this escape valve exists for a million privileged men, most of President Nixon's reforms to democratize the draft are meaningless.

The Reserve and the Guard are much easier to be in than the regular Army. First, they usually don't send you to Vietnam; second, you're on full-time active duty for only four and one half months, which disrupts your marriage, career, and friendships far less than being drafted for two whole years. For these reasons, when I was 21, I enlisted in the Army Reserve rather than wait to be drafted.

An enlisted man must join the Reserve or the Guard for a six-year hitch. After those initial few months of active duty training, you go to a two-week camp each summer, and to weekly drills during the year. Theoretically, the weekly drills in your hometown Reserve or Guard unit keep up your training. In practice, they are more like a mechanical toy which I

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remember reading about a few years ago. The toy was a square black box full of machinery with a switch on the side. When you flipped the switch, the cover of the box opened slowly, a mechanical hand came out, turned the switch off, and then retreated slowly back inside the box. The toy had no use aside from grinding away and eventually turning itself off. My Reserve unit was like that.

When I first joined, I spent several of those drills being processed, paid, and promoted. All around me the same was happening to most of the unit's other 500-odd officers and men. I somehow thought this was a deliberate lull to catch up on administrative paperwork, and that the regular program would start in a few weeks. But it never did. Eventually I realized my Reserve unit did virtually nothing but administer itself.

Each drill began with recorded bugle calls played over a loudspeaker, and then sundry saluting and marching about on the small San Francisco Army base where we met. Then the 500 soldiers, with much shouting of commands and waving of clipboards, were sent indoors and divided up for work into more than a dozen different "sections," for what was called "on-the-job training."

One section checked through the sign-in rosters, and sent threatening letters to people who missed meetings (if you miss five meetings, you get sent to active duty); another promoted people; another issued everybody's paychecks; a truly enormous section with yards of desks and typewriters kept the personnel files in order. Still another section processed men into the unit, while a subgroup processed them out. A section of Military Policemen patrolled the building to make sure no one escaped from all this. (They weren't always successful. One evening three friends and I got out, saw a movie downtown, and came back to the drill in time to sign out. Others, still bolder, did this kind of thing regularly). Another section dispensed paper and typewriters and mimeograph ink; another prepared coffee and doughnuts for the refreshment break. As the unit grew new jobs flowered: one section set up interoffice telephones and another provided a messenger service to carry papers between all the sections.

Surviving the Boredom

A number of mechanisms used up excess time. One was lesson plans. Every time somebody gives an Army class, he must turn in a "lesson plan" —a long outline, in a special format, of what he said. However, in my own section of the unit, and I believe in most of the others, there were no classes: everyone was too busy either doing the administrative paperwork or trying to get out of it. But regulations called for classes, so we had to write out lesson plans each week—outlines of classes never given. We turned in the lesson plans quarterly to another section, which kept people busy tabulating them. Visiting generals could then be shown proof of all the training we were getting.

There were also the movies. Unit members who could not be kept busy in the sections were sent to a large auditorium. There, they were usually shown Army films, with the same film often shown many times over the years. Occasionally there were movies on things like first aid or safe driving, but most were much farther afield. I remember one documentary about Greenland (huskies, ice, fjords, and freedom-loving Eskimos), and one ancient Air Force film, in an extraordinary reddish-brown no-man's-land between black and white and color, about "Survival in the Tundra."

For all its insanity, going through this charade each week is preferable to being shot at in Vietnam, which is why Reserve units have huge waiting lists. (Each armed force has its Reserve; the most important are the Army Reserve and the Army National Guard, to which nearly 700,000 of the country's one million paid Reservists belong). Men whose draft notices

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are about to arrive are sometimes so desperate to join the Reserve that they pay. In New York City alone, there have been half a dozen cases in recent years where Reserve or Guard officials have been arrested and accused of accepting bribes to enlist people. One Chicago National Guard sergeant was charged with letting men into his unit at a price of over $500 apiece.

Only the Right People

Competition to get into the Reserve and Guard is heavy, and the privileged usually win. Most Reserve and Guard units are exclusive institutions, with the flavor of country clubs, fraternal societies, or comfortable restaurants where you know the other patrons. Defense Department figures show the percentage of college graduates among Army Reserve enlisted men is nearly *three times* as high as among draftees and enlistees of the regular Army, who do the fighting in Vietnam. In my own unit, most members were attorneys, stockbrokers, insurance agents, students, or executive trainees. A number of people had been fraternity brothers in college. At drills men talked about ski trips, stock tips, and M.B.A.'s.

All of this is far different from the World War II Army, where the Hollywood myths had a little truth and rich and poor actually sometimes did fight together. Now the split between the Reserves and the regular Army intensifies the class divisions in this country rather than lessening them.

Besides being unjust, all this matters politically. If the sons of the influential were being killed in Vietnam at the same rate as the sons of black people and the often pro-war white working class, pressure to stop the war would be enormously stronger. An anti-war movement of upper-middle-class college students has already put something of a dent in two Administrations' war plans. If this class of men had been forced to do the actual fighting, instead of being able to join Reserve units, their protests might well have stopped the war. The Pentagon must be grateful for the Reserves and Guard, a system that keeps so many of these men out of Vietnam.

(Like regular Army soldiers, a good many Reservists and National Guardsmen are publicly protesting the war now. The way they do so often reflects their affluence: recently, large groups of Reservists and Guardsmen in Boston and Washington, D.C. called press conferences, and announced that they were giving their military pay away to peace organizations and candidates. The Army was furious, but couldn't find any regulations against this. Legal actions are also popular, since thousands of Reservists and Guardsmen are lawyers or law students. The Army has been hit with lawsuits over every conceivable issue, ranging from its right to send Reservists to war to its right to make them cut their hair.)

Reserve and National Guard units are not supposed to have such an elite clientele. With some exceptions, the law says units are supposed to enlist new members first-come first-served. Theoretically you can't get in until your name comes to the top of the long waiting list. But in practice, it doesn't work that way. As with all things in the military, it takes lots of paperwork to enlist somebody. So you just speed up the paperwork when you want to get a friend in, or when you want to keep someone out, you slow it down until he gets drafted.

I know this often happens, because I'm guilty of having taken advantage of it twice. When I joined my unit, I was able to jump over the heads of a sizable backlog of other applicants because a friend of a friend knew a high-ranking officer. A year later I was able to get a close friend into my unit in a hurry. I was told quite frankly: "We wouldn't do it except that he's a friend of yours."

Most Reservists and National Guardsmen are guilty of the same

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practice. In almost every unit, sons, brothers, in-laws, and former college classmates abound. There are also lots of certain kinds of people whom everybody wants to know—such as professional athletes. We had several San Francisco Giants and Forty-Niners; a 1967 survey disclosed 360 pro athletes in Reserve and Guard units around the country.

Another way the Reserve's and Guard's class nature shows is that they are virtually all white. San Francisco is roughly one-seventh black, but except for pro ballplayers, my unit had only three Negroes out of 500 men. The unit I was in before that drilled a few blocks from downtown Oakland, one of the largest Negro ghettos in the western United States, yet we had no black members at all. In the National Guard, things are worse: the proportion of Negroes in the Guard actually *declined* during 1969 from 1.18 to 1.15 per cent.

Vigilant Nostalgia

This escape valve for upper-middle-class draft-avoiders is not only unjust, but colossally expensive. In 1969, my old unit cost the U.S. taxpayers over $300,000 in salaries alone. Nationally, this adds up. The total Reserve and Guard budget is $2.5 billion a year. There are also certain additional costs, such as the hefty pensions paid retired Reservists and Guardsmen. And altogether the two organizations own approximately $10 billion worth of real estate, armories, airplanes, tanks, guns, ships, and other equipment.

The Reserves and Guard help draft-avoiders, and help the Army by keeping such men out of Vietnam, but they have no other military use whatever—either for defense or for our adventures in Southeast Asia, the Dominican Republic and elsewhere. The best proof of this is that the U.S. is fighting the fourth largest war in its history, Vietnam, almost without them. Approximately 35,000, many of them fliers, were mobilized briefly after the *Pueblo* incident, but they are all home now. Otherwise there have been no Reserve or Guard units in Vietnam.

Of course the National Guard does sometimes rescue people from avalanches, tornadoes, and the like, and no one can argue against that. People who believe the demands of students, blacks, and strikers should be answered with armed force probably would say there is a "need" for the National Guard there, too—(though not for the Army Reserve, which in recent years has not been used in domestic disorders, except for the New York mail strike). But even then, huge parts of the Guard establishment are excess by anyone's definition: even George Wallace doesn't advocate putting down ghetto rebellions with long-range artillery. In fiscal year 1969, less than one out of every seven Army National Guardsmen in the country was called up for what the Pentagon likes to call "civil disturbances." And the Guardsmen sent into battle at Kent State and elsewhere have created many additional disturbances of their own.

Though the Reserves and Guard provided a good deal of manpower for World War II, in the 1970's America does not need a reserve land army of 700,000 men for its "defense." And in the days of ICBM's and ground-to-air missiles, the Air National Guard's expensive jet fighters, manned round-the-clock at 22 bases throughout the country, are about as necessary as horse cavalry.

Unable to get rid of this ungainly and ill-trained force, the government from time to time asserts that there really is a need for it after all. Defense Secretary Laird recently announced that in the future, Vietnam-type wars would be fought with mobilized Reserve and Guard units, not with draftees. It is not yet clear whether he really means what he says. At present his words mean nothing, for there are no Reserve and Guard units among the 300,000-plus Americans in Vietnam, and there are no plans for send-

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ing any.

Defense Secretary MacNamara had enough technical common sense to know the Reserves were military surplus. In 1964 he proposed that the Army Reserve be cut down drastically, and that what remained be merged into the National Guard. His plan suffered a resounding defeat by Congress, and no Administration has dared try anything like it since. Reserve and Guard strength has remained the same. MacNamara had run up against one of the most powerful and least known lobbies in Washington.

Fly with Walter Mitty

The Reserve and Guard of course provide an inexhaustible market for tanks and guns and planes the same way the rest of the armed forces do, and no doubt the big war contractors like this. But the most powerful lobby behind the Reserve and the Guard is its members. I'm not talking here of draft-avoiders like myself who leave as soon as their mandatory six years are up, but of the men who stay in voluntarily beyond them. Most Reserve and Guard officers above the rank of captain and most enlisted men above staff sergeant are making a part-time career out of the military. The pay is excellent. A colonel, for instance, can earn over $90 for a single day's drill. Twenty years service earns you a pension of up to several hundred dollars a month—not bad for a one-evening-a-week job.

These "20-year men" are a mixture. Some are decent people who just need the money. Others are lonely men, often divorced or unmarried, who seek in Reserve or Guard units the kind of fellowship they can't find elsewhere. And some are the type anyone who has been in the Army knows too well: men who get a visible, almost erotic pleasure out of snapping salutes and shouting commands, who would like to see the whole world in uniform. (In a sane society, there should be drill teams and marching bands for these people, so they could satisfy their desires in a socially harmless way—and not at public expense.) For these militarist types, the Reserve is sometimes a Walter Mitty fantasy momentarily come true: the busboy by day becomes a sergeant major by night; the insurance clerk flies jet fighters on weekends.

These career soldiers are well organized. They have two efficient pressure groups, which even Hanson Baldwin, the hawkish former military writer for the *New York Times*, calls "powerful lobbies," the Reserve Officers Association and the National Guard Association. The roots of these groups go back a long way, and their histories are full of fascinating lessons in lobbying technique. (The lobbying prowess of the National Guard Association is the subject of a full-length book by a Harvard political scientist.) Shortly after World War II, for example, the Air Force wanted to merge the Air Force Reserve and the Air National Guard for obvious efficiency reasons. The NGA stopped the plan cold by quietly threatening to use its influence to get a Congressional investigation of liquor sales at certain air bases.

The most remarkable thing about these pressure groups is that, unlike most lobbies, they don't just influence Congress: their members are *in* Congress. About 130 Senators and Representatives are in the Reserves, plus a similar number of their staff. A good many of these Reservist-Congressmen are also active members and office-holders of the two associations. Senator Strom Thurmond, an Army Reserve major general, is a former national president of the Reserve Officers Association.

This strange combination of outside pressure groups and Congressmen has stopped all attempts to change the Reserve structure. Its most stunning victory was over the 1964 MacNamara plan, but, unlike the Reserves the ROA is always ready for battle. In 1970 the Nixon Administration tried

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to cut a few thousand men from the small Coast Guard Reserves as a minor economy measure. The ROA swung into action, vigorously, effectively, and rather dishonestly (it instructed its Coast Guard members to fire off protest letters to Congressmen and the President *without* saying they were Coast Guard Reserve officers). Reservist-Congressmen joined the fray, and the plan was swiftly killed in committee. As former White House assistant Douglass Cater wrote a few years ago: "These citizen soldiers are so solidly entrenched politically that no one in Washington dares challenge them frontally."

The Best Defense is Good PR

The links between Congress, the Reserves, and the two lobbies make one big family. The ROA's Washington office is headed by Colonel John T. Carlton, former administrative assistant to ex-Senator George Smathers of Florida. The former head of the NGA's office was once a staff member of the House Armed Services Committee. Committee chief counsel John Blandford is a Marine Reserve brigadier general, scheduled for promotion to major general. A few years ago, the Committee's chief clerk was an Air Force Reserve brigadier general.

No one seems to mind that soldier-Congressmen are Reservists under the command of armed forces for which as Senators and Representatives they vote money. Or that a Reservist-Senator could vote to call—or not to call—himself to active duty. (A group of anti-war Reservists I belong to recently brought suit charging that this situation is unconstitutional.) This conflict of interest simply strengthens the military bloc; the chance to do things like fly jets on weekends (remember those pictures of Air Force Reserve Major General Barry Goldwater from the 1964 campaign?) makes these hawks still friendlier towards the military budget.

The Reserve lobby is also helped by forces within the military itself. To begin with, every bureaucracy creates its own needs. Career Reserve and Guard officers energetically pressure their Pentagon superiors for more troops, because the more men they command the better their chance for promotion. There's a similar momentum with buildings and equipment. During the last few years my old unit constantly grew and the building we drilled in got more and more crowded. Offices were so packed you had to shout to be heard, and the hallway was like a railway station. Finally they built us a new and larger building at the cost of nearly a million dollars, and all the officers and men, even those who clearly saw the insanity of the Reserve, rejoiced the Army had taken this "reasonable" step at last. There must be similar pressures from other units, because the Army is now planning to build $600 million worth of new Reserve and Guard armories in the next 10 years.

Momentum also comes from the Reserves' lavish public relations program, which is currently getting a major step-up. (I know a little of this first-hand, because I spent much of my own recently-ended six years in the Army Reserve writing press releases.) A good example of how this works was provided in 1968, the Army Reserve's sixtieth anniversary. Information officers in the nation's Reserve units were sent neatly-packaged red cardboard "kits" of propaganda for their local news media. Among other things, each kit contained slides and scripts for TV and radio commercials, and a selection of newspaper advertisements in different sizes. The largest ad was worded as if written by someone other than the Army: ". . . they're always there when we need them. So now we'd just like to say thanks. And happy sixtieth anniversary to the men and women of the U.S. Army Reserve." There was a blank space at the bottom where a local newspaper or business could print its name. The kit also included a prepared speech about the Reserves

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for delivery "before such groups as the Lions, Rotary, and Kiwanis, etc.," a statement for your mayor to sign to proclaim Army Reserve Week and a memo with an unnerving suggestion: "Check with your local television stations. . . to see if they would show one or more 'war' movies during the anniversary week as a special salute to the Army Reserve."

The National Guard handbook for unit information officers includes a prepared prayer to give local clergymen: "Almighty God. . . we thank Thee for those noble patriots who in times past didst rise up to deliver our nation out of the hands of the enemy. . . ." When talking to mortals, the handbook urges officers to stress the Guard's pork barrel aspect: "Your unit. . . represents a 'hidden' industry for your town. Your Chamber of Commerce or other civic newsletter will be glad to know this. . . . The fact that the extra pay earned by Guardsmen during the year and at field training is spent with local merchants is a good selling point."

The National Guard, especially, goes in for publicity in a big way. Its public relations office at the Pentagon has a $450,000 annual budget, and besides this there are information officers at hundreds of Guard units around the country. The Guard employed a big ad agency two years ago and has gotten the late Senator Everett Dirksen, John Wayne, and others to tape radio and TV commercials. Supposedly all this hoopla is necessary for "recruiting," but the Guard now has a waiting list of over 100,000 men hoping to get in. In fact, these publicity campaigns are really to help persuade the public to keep the Guard and Reserves alive at all.

Sometimes the Reserve-Guard public relations network is used more openly for political purposes, much as a labor union mobilizes members to work for an election candidate. In November, 1969, Major General Winston Wilson, head of the National Guard, asked Guard commanders in all states to suggest to the nation's 470,000 Guardsmen that as a protest to the November Moratorium against the war, they fly the flag, drive with their headlights on, and leave their porch lights on at night. (Like the Guard, there is something archaic about this: how many Americans still have porches?) Some Ohio National Guardsmen were asked to write letters to President Nixon supporting the war.

Finally, the Reserve-Guard lobby gets strong support from another unexpected source—state governors. A number of them can always be counted on to testify before Congress if Guard appropriations are under fire. The main reason is that governors appoint National Guard officers, and no politician wants to lose that valuable patronage network.

The end result of all these pressures is that Congress methodically votes more money for the Reserves and Guard than the President asks for. In 1967 Congress wanted to continue certain Air Force Reserve and Air National Guard units the Pentagon wanted dropped, and the House Appropriations Committee wrote into the defense bill provisions for 20,000 more Army Reservists than the Pentagon wanted. President Johnson blew his top: "While similar restrictions have been included in the Defense Department appropriations bill in recent years, I am becoming increasingly concerned about them because of the undesirable rigidity they impose on our military structure." When even Johnson complains about military appropriations being too high—and this in the middle of the Vietnam build-up—then things are really out of control.

A Sorry System

The cost is one reason for ending the Reserves and the Guard; Vietnam is the other. It is a sorry system: the poor and the blacks fight the war; the courageous of all classes go to jail as draft resisters; the privileged join the Reserves or the Guard. Eliminating

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that escape valve from the draft would not only be just, it would help end the war. People with power in America have shown themselves little moved by the deaths of Vietnamese and of U.S. troops there now. If their own sons were there, things might be different. Now, the sons of senators and corporation presidents are more likely to be in Reserve or Guard units than on patrol in Vietnam. It is harder to talk calmly of just "slowly winding down" the war if your own boy is in it. This alone should make elimination of the Reserves and the Guard an urgent goal for all who care about stopping this war and preventing the next. ■

Running the Bus Lines of Sofia

One interesting and little-known Reserve operation is the Civil Affairs program. The idea, based on World War II experience, is that Army Reservists be trained to administer the daily, civilian affairs of countries the Pentagon may be occupying. There are currently over 5,000 officers and men in the Reserve Civil Affairs units. Judging from the countries they are studying, it looks as if the Pentagon has contingency plans to run most of the world.

Generally, each unit specializes in running one country, or a group of small countries in one area. A large unit in the Bronx is trained to set up a government anywhere in Africa; a smaller San Francisco unit reportedly concentrates on Southern Africa; a San Pablo, California, unit spent its last summer camp learning about South Korea; a group of South Carolina units specialize in the Balkans.

Some units train each man for a specific job—running the railways of Bolivia, the museums of Czechoslovakia, or the bus lines of Sofia, Bulgaria.

The Civil Affairs units often write booklets on "their" countries—long tracts not unlike diligent high-school papers, full of statistics from almanacs and encyclopedias. There are such Reservist-written books on Greece, Bulgaria, Romania, and Azerbaijan-Armenia-Georgia.

It is hard to find out much about the Civil Affairs units. The Pentagon is not eager to publicize them. But a clue to the way the Army plans to use these men comes from the "scenario" of a recent training exercise done by 80 men of the 450th Civil Affairs Company of Riverdale, Maryland. Several other East Coast Reserve units appear to have drilled with the same war-game-on-paper.

The scenario was this: It is June 1970. An anti-Castro revolt breaks out in the Las Villas province of Cuba. Great food shortages. Exile groups (apparently supported by the United States) send raiders. Castro flies to Moscow for instructions. He flies back and declares martial law. Peasants join the invading exiles. The rebels set up a provisional government. "Anarchy" is in sight, so the provisional government requests 20,000 OAS troops. The troops are to "maintain law and order." The U.S. will provide only air cover and non-combat support troops; other OAS nations will supply the rest (Vietnamization catches on fast).

The exercise goes on to say which Reserve units are to administer which areas—the 352nd and the 300th in Camaguey and the 450th near Santa Clara.

Whatever anonymous Army officer wrote the scenario doesn't seem to know much about Cuba. Among other things, he confuses the Cuban July 26 national holiday with the French July 14.

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Blaming the Victim

by William Ryan

A major pharmaceutical manufacturer, as an act of humanitarian concern, has distributed copies of a large poster warning "Lead Paint Can Kill!" The poster, featuring a photograph of the face of a charming little girl, goes on to explain that if children *eat* lead paint, it can poison them, they can develop serious symptoms, suffer permanent brain damage, even die. The health department of a major American city has put out a coloring book that provides the same information. While the poster urges parents to prevent their children from eating paint, the coloring book is more vivid. It labels as neglectful and thoughtless the mother who does not keep her infant under constant surveillance to keep it from eating paint chips.

Now, no one would argue against the idea that it is important to spread knowledge about the danger of eating paint in order that parents might act to forestall their children from doing so. But to campaign against lead paint *only* in these terms is destructive and misleading and, in a sense, an effective way to support and agree with slum landlords—who define the problem of lead poisoning in precisely these terms.

The cause of the poisoning is the lead in the paint on the walls of the apartment in which the children live. The presence of the lead is illegal. To use lead paint in a residence is illegal. To permit lead paint to be exposed in a residence is illegal. It is not only illegal, it is potentially criminal since the housing code does provide for criminal penalties. The general problem of lead poisoning, then, is more accurately analyzed as the result of a systematic program of lawbreaking by one interest group in the community, with the toleration and encouragement of the public authority charged with enforcing that law. To ignore these continued and repeated law violations, to ignore the fact that the supposed law enforcer actually cooperates in lawbreaking, and then to load a burden of guilt on the mother of a dead or dangerously ill child is an egregious distortion of reality. And to do so under the guise of public-spirited and humanitarian service to the community is intolerable.

But this is how Blaming the Victim works. The righteous humanitarian concern displayed by the drug company with its poster, and the health department with its coloring book, is a genuine concern, and this is a typical feature of blaming the victim. Also typical is the swerving away from the central target that requires systematic change and, instead, focusing in on the individual affected. The ultimate effect is always to distract attention from the basic causes and to leave the

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primary social injustice untouched. And, most telling, the proposed remedy for the problem is, of course, to work on the victim himself. Prescriptions for cure are invariably conceived to revamp and revise the victim, never to change the surrounding circumstances. They want to change his attitudes, alter his values, fill up his cultural deficits, energize his apathetic soul, cure his character defects, train him and polish him and woo him from his savage ways.

The Perfumed Indictment

The generic process of blaming the victim is applied to almost every American problem. The miserable health care of the poor is explained away on the grounds that the victim has poor motivation and lacks health information. The problems of slum housing are traced to the characteristics of tenants who are labeled as "Southern rural migrants" not yet "acculturated" to life in the big city. The "multiproblem" poor, it is claimed, suffer the psychological effects of impoverishment, the "culture of poverty," and the deviant value system of the lower classes; consequently, though unwittingly, they cause their own troubles. From such a viewpoint, the obvious fact that poverty is primarily an absence of money is easily overlooked or set aside.

The growing number of families receiving welfare are fallaciously linked together with the increased number of illegitimate children as twin results of promiscuity and sexual abandon among members of the lower orders. Every important social problem—crime, mental illness, civil disorder, unemployment—has been analyzed within the framework of the victim-blaming ideology.

I have been listening to the victim-blamers and pondering their thought processes for a number of years. That process is often very subtle. Victim-blaming is cloaked in kindness and concern and bears all the trappings and statistical furbelows of scientism; it is obscured by a perfumed haze of humanitarianism. In observing the process of blaming the victim, one tends to be confused and disoriented because those who practice this art display a deep concern for the victims that is quite genuine. In this way, the new ideology is very different from the open prejudice and reactionary tactics of the old days. Its adherents include sympathetic social scientists with social consciences in good working order and liberal politicans with a genuine commitment to reform. They are very careful to dissociate themselves from vulgar Calvinism or crude racism; they indignantly condemn any notions of innate wickedness or genetic defect. "The Negro is *not born* inferior," they shout apoplectically. "Force of circumstance," they explain in reasonable tones, "has *made* him inferior." And they dismiss with self-righteous contempt any claims that the poor man in America is plainly unworthy or shiftless or enamored of idleness. No, they say, he is "caught in the cycle of poverty." He is trained to be poor by his culture and his family life, endowed by his environment (perhaps by his ignorant mother's outdated style of toilet training) with those unfortunately unpleasant characteristics that make him ineligible for a passport into the affluent society.

The Moynihan Sleight

I was struck by the similarity between this cultural deprivation mythology and the document known as the Moynihan Report on the subject of the Negro family. An ideology like Moynihan's resonates perfectly with the mood and purposes of the public and of its intellectual leaders, who perform the task of composing and conveying the official wisdom of the day. Articles, reviews, and columns in *Life, Look, The New York Times*, and other influential publications supported and adopted the Moynihan thesis and swamped the opposition, which by that time had grown to be a

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substantial group of critics, most of them trained social scientists.

Moynihan was able to take a subject that had previously been confined to the Sociology Department seminar room, filled with aromatic smoke from judiciously puffed pipes, and bring it into a central position in popular American thought, creating a whole new set of group stereotypes which support the notion that Negro culture produces a weak and disorganized form of family life, which in turn is a major factor in maintaining Negro inequality.

With so much journalistic attention focused on it, the report surfaced as a solid document, complete with a Government Printing Office number and a very modest price (45 cents). Those who had been alarmed and concerned by the advance reports were appalled by the emphasis in *The Negro Family* on the handicapping effect of the supposedly deviant Negro family and by the implication that efforts to end discrimination and to achieve the goals of the civil rights movement were futile in the face of a central weakness in the Negro community:

> At the heart of the deterioration of the fabric of Negro society is the deterioration of the Negro family. It is the fundamental source of weakness of the Negro community at the present time. . . . Unless this damage is repaired, all the effort to end discrimination and poverty and injustice will come to little.

One can readily summarize and simplify the essential elements of this ideological position. First, the Negro family, as a major institution within a Negro subculture, is weak and unstable, tending toward a matriarchal form. Second, the present status of the Negro family is rooted in the experience of slavery. Third, the distortions in Negro family structure have been maintained by Negro unemployment that has continued at disastrously high levels for many decades. Fourth, the weakened Negro family produces children, particularly sons, who are so damaged by their family experience that they are unable to profit from educational and employment opportunities. Fifth, therefore efforts to achieve formal change in such social institutions as ghetto schools and discriminatory employment practices will have little effect on present patterns of inequality of status; the ending of Negro inequality and poverty will not, and cannot, be achieved until something is done to strengthen and stabilize the Negro family.

The Hydraulics of Misery

The extent to which these ideas have penetrated the thinking of the social welfare establishment and that of its pet academics can be grasped rather well by reading a revolting government publication, a little pamphlet called "Growing Up Poor" (which might well have been subtitled "Dick and Jane Go Slumming"). In its 108 pages, Catherine Chilman has managed to pack every nefarious idea about the poor that has ever been dreamed up in the past 30 years, up to and including, incredible as it may seem, the question of the poor's "social acceptability." It is a downright emetic book, yet every person concerned about these questions should read it in order to understand what social workers and social scientists are whispering to each other behind their cupped hands.

Dr. Chilman lists no fewer than 51 characteristics of the way of life of the lower-lower class that are specifically handicapping to any one of them who might want to achieve such middle-class characteristics as being well adjusted, well educated, socially acceptable, of good moral character, and involved in sound family life. Among them are: fatalistic, apathetic attitudes; magical, rigid thinking; pragmatic, concrete values; poor impulse control; ambivalent attitudes toward property rights; little value placed on neatness and cleanliness; little verbal communication and discussion; high divorce and separa-

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tion rates; and income less than $3,000 a year.

"Growing Up Poor," can be thought of as a somewhat adulterated, but reasonably accurate, distillate of the culture of poverty ideology—a popularization of this new version of the idea that poverty is a result of the characteristics of the poor themselves. This can be contrasted with the idea that poverty is most simply and clearly understood as a lack of money. One might formulate this idea in a more elegant way—"poverty is an economic status etiologically related to absence of both monetary input and access to income-generating resources"—but the message is the same. Being poor is having no cash in hand and damned little on the way. Put in these terms, poverty in the United States is almost a picayune problem. A redistribution of about $15 billion a year (less than two per cent of our Gross National Product that is now pushing toward $1 trillion annually) would bring every poor person above the present poverty line. This is less than half our annual expenditure on the Vietnam war.

In considerations of the mental health of the poor, the theoretical—or more properly, ideological—formulations that are beginning to attain dominance show unmistakable family resemblances to the Culture of Poverty cult.

For openers, let me quote from a widely-used psychiatric textbook:

> . . .to deal professionally with poor people. . . one must take account of their significant characteristics, particularly as these seem strange or hard to contend with. . . . The deprived are oriented toward the present and, to a lesser extent, the immediate past. . . . The lower class person is handicapped in his efforts to understand change, and he may fear new adjustments. . . . The disadvantaged person is likely to meet difficulties by adjusting to them rather than by attempting to overcome them. . . .

It is, of course, difficult for a modern psychiatrist to avoid the conclusion that, since emotional disorder is the result of intrapsychic distortions and malfunctions, the excessive prevalence of such disorders among the poor must be due to differential psychic development among persons of low socio-economic rank—engorgement of the Id, peristalsis of the projective mechanisms, dysrhythmic displacement, estoppage of libidinal currents, or some similarly portentous internal events. The basic Freudian model, essentially, is hydrodynamic; it traces, in a manner analogous to the science of hydraulics, the flow, velocity, pressure, and level of sexual and aggressive impulses through the psychic plumbing of Man—plumbing that is usually flawed by unsoldered joints, fittings of the wrong shape, pipes of the wrong size, and similar imperfections. Deviant and neurotic behavior, then, can be viewed as analogous to nerve-wracking clanging in the radiator, leaks, maddeningly slow trickles of hot water, and occasional disastrous overflowings of the toilet bowl onto the bathroom floor. Clamped inside the bounds of such a theoretical framework, the problem of the mental health of the poor is transformed into a study of the hydraulics of misery.

The final element in this ideology is the assumption that it is the early experiences of the poor—the failures of mothering, the inconsistent patterns of discipline, the exposure to deviant values and behavior patterns—that account for their apparent excessive vulnerability to emotional disorder.

The mental health treatment situation can also be described as a multiple victimization of the poor. First, we blame these victims for their problems by attributing their emotional distress to faulty psychic plumbing brought about by incorrect child-rearing and deviant psychological development, as well as the acquisition of the values of poverty—all of which we attribute to life style, and other quasi-cultural characteristics.

Then, we turn around and say that their values and their culture—partic-

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ular personality styles, and class-related emotional problems—make them ineligible for, and incapable of, profiting from the kind of help we have available—help which, incidentally, was created for, and is indeed specifically reserved for, our middle-class peers. All of which might be called blaming the victim—squared!

Housing Heresies

It is easy to see how such cultural and psychological assumptions victimize the poor on a practical level. When several citizens' groups in New Haven began to protest about the inadequacy of housing code enforcement, we began to hear, of course, about how terrible the tenants were, how they ruined the buildings, and how it was impossible for the landlord to keep up with their destructiveness. When we finally harassed the code enforcement agency to the point where they opened their files on uncorrected code violations, we were able to obtain a good cross-sectional view of the slum housing problem as defined, not by tenants or radical agitators, but by the trained and presumably competent housing inspectors who conducted the investigations and made out the reports.

Using the New Haven code violation data as a guideline, it seems clear that the one-third of violations that are exterior and the one-third that consist of such defects as electrical, heating, plumbing, and vermin violations are the responsibility of the landlord. If we give the landlord the extreme benefit of the doubt of the remaining one-third and apportion the blame equally between him and the tenant, we find that, at the maximum, one violation in six can be attributed to the tenant. By the most conservative estimate, then, the remaining five out of six—85 per cent—must be credited to the landlord's neglect.

But there is another factor that must be considered. After a defect has developed what is done about it? Usually, little or nothing. For example, the sample of 180 cases of code violations mentioned above represented violations that had remained uncorrected after landlords had been officially ordered to make repairs. The landlords had simply ignored or resisted these orders—for months and, in some instances, for years. In whatever way the specific conditions may have *originated*, their *continuation* (which also means their getting worse) was clearly due, first, to the failure of the landlord to keep his property up to code specifications (which are, in fact, quite lenient) and, second, to the failure of the city agency to enforce the code, which provides for criminal penalties in such cases. Even in those few cases in which landlords reluctantly comply with the code, they often do so contemptuously or spitefully, so that the improvement is almost as damaging psychologically as the violation was physically.

We ignore the real causes of slum housing just as we are persuaded to ignore the obvious in all phases of the victim's life: the continued blatant discrimination against the Negro, the gross deprivation of contraceptive and adoption services to the poor, and the heavy stresses endemic in the life of the poor.

Dancing at Two Weddings

We come finally to the queston, "Why?" It is much easier to understand the process of blaming the victim as a way of thinking than it is to understand the motivation for it. Why do victim blamers, who are usually good people, blame the victim? The development and application of this ideology, and of all the mythologies associated with it, are readily exposed by careful analysis as hostile acts—one is almost tempted to say acts of war—directed against the disadvantaged, the distressed, the disinherited. It is class warfare in reverse. Yet those who are most fascinated and enchanted by this ideology tend to be progressive, humanitarian, and, in the best sense of the word, charitable persons. They

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would usually define themselves as moderates or liberals. Why do they pursue this dreadful war against the poor and the oppressed?

Put briefly, the answer can be formulated best in psychological terms—or, at least I, as a psychologist, am more comfortable with such a formulation. The highly-charged psychological problem confronting this hypothetical progressive, charitable person I am talking about is that of reconciling his own self-interest with the promptings of his humanitarian impulses. This psychological process of reconciliation is not worked out in a logical, rational, conscious way; it is a process that takes place far below the level of sharp consciousness, and the solution—blaming the victim—is arrived at subconsciously as a compromise that apparently satisfies both his self-interest and his charitable concerns.

Our potential victim blamers are in a dilemma. In the words of an old Yiddish proverb, they are trying to dance at two weddings. They are old friends of both brides and fond of both kinds of dancing, and they want to accept both invitations. They cannot bring themselves to attack the system that has been so good to them, but they want so badly to be helpful to the victims of racism and economic injustice.

Their solution is a brilliant compromise. They turn their attention to the victim in his post-victimized state. They want to bind up wounds, inject penicillin, administer morphine, and evacuate the wounded for rehabilitation. They explain what's wrong with the victim in terms of social experiences *in the past*, experiences that have left wounds, defects, paralysis, and disability. And they take the cure of these wounds and the reduction of these disabilities as the first order of business. They want to make the victims less vulnerable, send them back into battle with better weapons, thicker armor, a higher level of morale.

In order to do so effectively, of course, they must analyze the victims carefully, dispassionately, objectively, scientifically, empathetically, mathematically, and hardheadedly, to see what made them so vulnerable in the first place.

What weapons, now, might they have lacked when they went into battle? Job skills? Education?

What armor was lacking that might have warded off their wounds? Better values? Habits of thrift and foresight?

And what might have ravaged their morale? Apathy? Ignorance? Deviant lower-class cultural patterns?

This is the solution of the dilemma, the solution of blaming the victim. And those who buy this solution with a sigh of relief are inevitably blinding themselves to the basic causes of the problems being addressed. They are, most crucially, rejecting the possibility of blaming, not the victims, but themselves. They are all unconsciously passing judgments on themselves and bringing in a unanimous verdict of Not Guilty.

If one comes to believe that the culture of poverty produces persons *fated* to be poor, who can find any fault with our corporation-dominated economy? And if the Negro family produces young men *incapable* of achieving equality, let's deal with that first before we go on to the task of changing the pervasive racism that informs and shapes and distorts our every social institution. And if unsatisfactory resolution of one's Oedipus complex accounts for all emotional distress and mental disorder, then by all means let us attend to that and postpone worrying about the pounding day-to-day stresses of life on the bottom rungs that drive so many to drink, dope, and madness.

That is the ideology of Blaming the Victim, the tragic, frightening truth is that it is a mythology that is winning over the best people of our time, the very people who must resist this ideological temptation if we are to achieve nonviolent change in America. ■

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Memo of the Month

OFFICE OF ECONOMIC
OPPORTUNITY

Date: October 20, 1970
Reply to Attn. of: D/D

Subject: Overdue Correspondence

To: Dr. Thomas E. Bryant
Office of Health Affairs

It has come to my attention that your office is 16 letters overdue in responding to the Director's correspondence. This figure is as of the close of business October 19.

I would like to point out that every office is held responsible for the mail controlled to them until that mail has left the building - not just until it has left your particular office.

Effective immediately all personnel in the Office of Health Affairs are denied permission for any travel regarding official OEO business until Health Affairs' overdue mail is brought down to 15 letters or under. The Office of Administration is being notified to this effect.

WESLEY L. HJORNEVIK
Deputy Director

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Ben Yellen's Madness

by Michael E. Kinsley

The California desert has brought out the best in Dr. Ben Yellen of Brooklyn. Not only has the dry air helped alleviate his asthma, which is why he moved his medical practice from Brooklyn to Southern California's Imperial County in the mid-1940s, but the desert itself has been such a fertile source of official swindles, political corruption, and high-priced muck that Dr. Yellen's muckraking newsletter has become the best one-man polemical showcase since Thomas Paine.

Not that muckraking wasn't the farthest thing from the imagination of this 63-year-old Jewish doctor moved West. But Yellen couldn't exactly avoid what was happening around him, and the number and variety of scandals he uncovered, plus the price-tag involved, would be enough to boggle any Eastern mind, including Yellen's. When he began to notice things and tell people how they were being cheated, nobody listened. "At first Yellen was dumb," he says. "But then I got smart. I remembered what the great patriots did during the American Revolution. So I bought a mimeograph from Sears Roebuck and got a teacher from Business Methods to teach me how to use the damn thing." That was around 1962. "Since then, I've been clobbering everybody with my newsletters."

The "Newsletter from Dr. Ben Yellen" is printed on legal-size orange paper and comes out whenever the doctor has something to say—usually about twice a month. Yellen has developed his own writing style. He uses catch phrases like "Pinkley's Prostituted Press" (for the Imperial Valley's monopolistic newspaper chain) and "Millionaire Moochers" (for the valley growers). His hand-drawn headlines are designed for maximum impact. They say things like "Corrupt Interior Department

Provides Loopholes for Big Ranchers to Evade Law" and "Mrs. Osterkamp, Is This Your Charity?"

The latter, published in late 1967, concerned one Mrs. John Osterkamp, who opened her house for tours, an act of benevolence which produced $300 for charity. The newsletter points out that though this philanthropic effort was ballyhooed in the local establishment press, not much was made of the fact that the Osterkamps got $62,000 the year before for not growing cotton. Further, Yellen claims, the land Mr. Osterkamp farms escapes about $30,000 in property taxes each year because of low assessments. He also saves $75,000 a year in water bills because electricity users are charged high rates to provide cheap water for the growers; and like most rich farmers he probably pays little or no income tax. The newsletter said:

In the future, Dr. Yellen is going to sell tickets for "visiting of the homes" of ladies

Michael Kinsley is an editor of The Harvard Crimson.

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Fine

Paul J. Noden

with 10 children who are on welfare and get $4,000 yearly to feed and clothe the children. . . . With the information you have been supplied in this Newsletter, you can now more intelligently discuss with the Osterkamps how to afford Chippendale furniture or Louis Quatorze, or Ming vases, or Picasso paintings, or the kind of wall-to-wall carpeting for your new home. It is done by getting handouts and just paying very small or no income taxes. Charity has another meaning amongst the big ranchers.

Yellen's campaign opposes a many-tiered, vertically-integrated mountain of swindles that is built something like this: rich growers and big corporate landowners are being paid enormous government subsidies in cheap irrigation water they're not entitled to, to irrigate land they hold illegally and on which they don't pay enough taxes, so they can cultivate crops harvested by Mexican labor, imported fraudulently and paid slave wages—or, more profitably, so they can be paid large sums of money by the government not to grow anything at all. One of the little ironies of this desert bonanza, as Yellen points out, is that while the U.S. government has spent millions to irrigate the desert, it also spends millions more to pay the owners not to grow crops on that now-fertile land, an irony not lost on astute landowners, who cash in both ways. This whole charade, when you add it up, costs the U.S. tens of millions in illegal or unnecessary payments to rich farmers in Imperial County alone, and runs into the billions across the state as a whole.

There's not much outright graft, little violence of the non-institutional type, no mischievous grins of acknowledged evil, and no humor—just expensive lawyers writing complicated contracts, interlocking directorates, and layer upon layer of government subsidies to the very rich.

The continuing and lonely campaign against this process is Yellen's life. On the side, he treats 50 or 60 patients a day in his small clinic in Brawley, most of them poor Mexican-Americans the other doctors won't handle. He sleeps on a cot in his clinic, using all his money for printing the newsletter, running for office (he once won a two-year term on the Brawley city council but a massive campaign by the growers prevented his reelection), and for filing lawsuits. His effort is lonely because support of big growers, like patriotism, is one of those causes that binds most politicians together, providing conservative Nixonites like Herb Klein and Ronald Reagan and liberal democrats like newly-elected Senator John Tunney something to agree on. Powerful newspapers like the *Los Angeles Times* have not helped either—refusing to adequately and fairly report the land and water issue because its owners, the Chandlers, personally own large tracts that benefit from the federal doles. And, ironically, while the whole big grower bubble depends on the federal pump for its existence, the big growers themselves seem to strike fear into politicians, who begin to believe that the government and their future

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offices in it depend on the growers.

Yellen distributes his newsletters, with the help of his widowed receptionist of 20 years, Mrs. Ida Paddock, to cars along the streets of Brawley and El Centro, the county seat, and in such places as the Bank of America parking lot. He stands in El Centro, a short, balding man in an ill-fitting, white, short-sleeved shirt, a canvas bag over each shoulder and a picket sign in one hand, handing newsletters to passers-by. He also mails them by the hundreds to Senators, Congressmen, presidential advisers, newspapers, and college professors. When "Pinkley's Prostituted Press" was taken over by a man named Schurz from South Bend, Yellen first checked to make sure this Schurz wasn't related to the famous patriot Carl Schurz, who fled to America from Germany in 1848 and later became a member of Lincoln's Cabinet and editor of *Harper's*. ("Imagine him being the descendant of a great patriot!") Upon determining there was no relation, Yellen prepared a newsletter called "Schurz's Prostituted Press" and sent it to "all the bigwigs in the South Bend telephone book." Then he discovered Schurz was on the executive board of the Associated Press, so he sent copies to the boards of AP, UPI, and three or four newspaper associations. When he found Schurz was on the board of Notre Dame and had been awarded an honorary degree by some journalism school, he sent copies to everybody at Notre Dame as well as to every journalism school in the country. "I worked him over to a fare-thee-well," Yellen says.

Of course, love is a two-way street. Yellen claims the Pinkley and Schurz press used to run vicious editorials calling him "a maniac and a bolshevik and things like that." Now they pretty much ignore him, but they have never given fair treatment to the issues he raised.

To understand Ben Yellen's frontal attacks, one must first know a little about California land policy and the Imperial Irrigation District.

In California, land is power. And in Southern California, where it rains about three inches a year, water is land. Without 40-years' worth of outdoor plumbing installed by the Federal Bureau of Reclamation to tap the distant Colorado River, much of California would be desert; with it, California produces 25 per cent of America's food.

The U.S. government delivers the water to duchies called irrigation districts. The largest of these—the largest artificially irrigated area in the Western Hemisphere—is the Imperial Irrigation District, with almost 2,000 miles of canals irrigating $230 million worth of crops. In a desert, the irrigation district, and the board of rich growers who control it, *is* the power structure. The IID not only supplies water, but the generators on its canals supply the electricity used, among other things, for air conditioning in the 110-degree heat.

Today, 70 per cent of the Imperial Irrigation District is owned by outsiders, many of them the large corporations. The rest is controlled by local interests who themselves make upwards of $200,000 a year from government subsidies and other incomes. Water sold for $2.30 per acre-foot in the IID last year, up from $2.00 in 1962. By way of comparison, in 1962 the Metropolitan Water District was charging the San Diego Water Authority $19 per acre-foot. It was charging farmers $11 per acre-foot. Yellen estimates the growers benefit from cheap water to the tune of $14 million a year.

The idea behind the federal government's bringing water to the California desert was to encourage the little man, increasingly forced out of farming and into overgrown urban populations, to get back into small, family farming. Already much of California's naturally rich lands had been taken over by large owners and corporations, and the government thought if it could bear the cost of the irrigation system and provide water at

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very cheap rates (in effect, a subsidy) then small farming could again be encouraged on a grand scale. So the U.S. Reclamation Act of 1902 put the government into the business of building dams and canals to bring the water to these desert areas. Two stipulations of the 1902 act were that nobody could get such water to cultivate more than 160 acres (based on the similar stipulation in the 1862 Homestead Act) and that the recipient had to reside on or near the land to qualify. When he signed the act, President Theodore Roosevelt said, "The money is being spent to build up the little man of the West so that no big man from East or West can come in to get a monopoly on the water or the land."

Another motivation behind the Reclamation Act was to show revolutionaries and extremists, the Weathermen of the turn of the century, that the political system could still work to benefit all. George H. Maxwell told the 1896 National Irrigation Congress: "If we have reached a condition in less than half a century when, in case of riot and disorder, the national government must be called upon to suppress riot and disturbances in Chicago, to keep the peace and preserve property, how is it to be done in years to come, when these great cities have grown to such a size that no other power can control them. . . ." The way it was supposed to be done was by opening up the new lands on a fair basis. Roosevelt said the motivation behind his support of the plan was "because I am against revolution. . . the doctrines of the Extremists, of the Socialists. . . because I distrust violence and disbelieve in it." (Some of Yellen's newsletters drew a connection between more recent riots and the failure of Roosevelt's plan.)

Benign Neglect

With such aims in mind, in 1928 Congress passed the Boulder Canyon Project Act, authorizing construction of the Hoover Dam and the All-American Canal, which brings water from below the dam to the Imperial Valley. Construction on the dam began in 1931.

Naturally, enthused as they were, the Imperial Valley landowners were worried about the 160-acre limitation and the residency requirement. Already, 45 per cent of the land was owned by outsiders, people who lived far away from the valley, and much of it consisted of large holdings in the thousands, not tens, of acres. And while these rich gentlemen might have been against future riots in the cities and the growth of extremism, the prospects of discouraging those trends by giving up their own lands, about to be made valuable by federal water, were gruesome indeed.

The matter of enforcing the requirements was left up in the air until 1932 when Franklin Roosevelt was elected President. Suspecting that Roosevelt would be less sympathetic to them than Hoover, the landowners took action with Hoover still in office. They financed a suit by a relatively small landowner (200 acres) against the IID to prevent it from enforcing the requirements. The IID, controlled by large interests, was not enamored with the prospect of enforcing them, either. So their lawyer got another lawyer to write P. W. Dent, assistant commissioner of the Bureau of Reclamation. In this letter, dated February 5, 1933—a month before Roosevelt was to take office—the lawyer asked Dent to get the Reclamation Solicitor to make a ruling, "provided that such ruling would be that the 160-acre limitation did not apply." The letter continues, "He [the IID lawyer] doesn't want any formal ruling, of course, if the Solicitor were to hold that the limitation applies so far as Imperial District is concerned."

Apparently, the Reclamation Solicitor either did not want to or was not allowed to make the ruling. Dent himself drafted a ruling saying the limitation did not apply and on February 7 forwarded it to Northcutt Ely, the executive assistant to the Secretary of

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the Interior. Ely scrawled "I agree" on the ruling and forwarded it to the Secretary, at that time Ray Lyman Wilbur, who was a friend of Hoover and from California. He was not a lawyer. Ely was. Wilbur took Ely's word for it, signed the ruling, and mailed it to the IID February 24, 1933.

Secretary Wilbur's ruling was based on a curious loophole in the law. He pointed out that while the 1902 act applies to water *sold* by the government, the water is delivered to the IID free. (Apparently the fact that the IID then sells the water to the growers didn't affect his ruling.) Therefore, he said, the 160-acre limitation did not apply.

A month later, of course, with Roosevelt established in office, Ray Lyman Wilbur and Northcutt Ely left the government. Ely went into private practice in Washington and has received an annual retainer from the Imperial Irrigation District ever since. He has also acted as chief counsel for the state of California in several reclamation disputes. In "Are the Big Ranchers Giving Bribes to the Interior Department?" Dr. Yellen discusses a previous lapse of the Interior Department—Albert Fall and the Teapot Dome scandal. He points out to his readers, "If Secretary Fall had been smart, he would not have taken any money when he was Secretary. He could have left his office and then accepted a job as 'a consultant' or be 'on a retainer' of the Sinclair Oil Company."

Some Gadfly

The Hoover Dam opened in 1935, the All-American Canal in 1940. The 160-acre limitation was never enforced. In 1948, Solicitor of the Interior Fowler Harper said nonenforcement of the law in the Imperial Valley was "without foundation" but nothing happened.

Early in the Kennedy Administration, Secretary of the Interior Stewart Udall became interested and on December 30, 1964, Solicitor of the Interior Frank Barry issued an opinion that the acreage limitation *did* apply in the Imperial Valley. Secretary Udall promised to get a speedy ruling on a test case in court. (Udall also proposed that the government buy back all the land owned in excess of the 160-acre limitation at prices that would reflect the value before the expensive irrigation began, but nothing came of it.)

When the IID refused to cooperate, the U.S. waited two years, then filed suit against them in U.S. District Court in San Diego on January 11, 1967. Until recently, however, the Justice Department had not bothered to bring the case to trial. "The government is simply not taking this case seriously," says James D. Lorenz of California Rural Legal Assistance, an OEO-funded public interest law firm. "They're delaying and using their most inexperienced lawyers." Of course, enforcement of the 160-acre limitation—even if it should come—would make no difference if the residency requirement is ignored. Large corporate outsiders could simply create many small paper corporations, each owning no more than 160 acres.

The Bureau of Reclamation has taken no trouble to hide its disdain for the law it's supposed to be enforcing. Speaking at the dedication of the IID's new headquarters in El Centro in October, 1965, Reclamation Commissioner Floyd Dominy was quoted in the L.A. *Times* as saying, "I think it's time to examine whether the 160-acre principle is sufficient for today's farming."

The L.A. *Times* itself has written several editorials on the 160-acre limitation. The paper was against the whole project in the early days, because it was thought the irrigation water system would divert water from the Mexican lands owned by the Chandlers. But more recently, since the Chandlers now own California lands that benefit from the irrigation, the paper has taken the big growers'

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position on the matter.

California politicians of all flavors agree with the big growers. John Tunney has said he's convinced the courts will find in favor of the IID. (Given the predelictions of the San Diego court, he is probably right.) If not, he said he favors congressional action. Senator George Murphy, agreeing with Tunney's approach, has introduced legislation to end the 160-acre limit once and for all. Governor Ronald Reagan appointed a task force to study the limitation; the task force came up with the recommendation that the limit be raised to "at least 640 acres." But Reagan quickly issued a press statement to assure Imperial Valley growers that even this limit would not apply to them.

"For more than three decades," Reagan rhapsodized, "Imperial Irrigation District water users have been excluded from the land limitation provisions of the federal reclamation law. This traditional arrangement has worked to the benefit of all concerned. . . . I believe preservation of the provisions of the contract will continue to benefit the people of this unique agricultural area. . . . I want to make it clear that I will continue to oppose any attempt by the federal government to impose acreage limitation on the farmers of the Imperial Irrigation District."

The growers have also formed a group called Imperial Resources Associates to fight the limitation. Much of its propaganda is reprinted word-for-word in the publications of the IID. President of the IRA is Steven H. Elmore, who received $126,243 from the federal government in 1966 for not growing crops. (Two other Elmores got $484,000 more.)

The Imperial Resources Associates was organized by a vice president of the Irvine Company, which owns 12,000 acres of crop land in Imperial County as well as 88,000 acres of extremely valuable land throughout Orange County in suburban Los Angeles.

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The Irvine Company illustrates a new trend toward holding these irrigated lands not for farming, but for future speculation in growing urban slurbs, a trend which totally contradicts the spirit of the original reclamation law. Meanwhile, before the building starts, the companies still rake in on the crop price supports, subsidies, and tax breaks given to large farmers. In 1966, Irvine land in Imperial County alone produced a crop of $180,000 in government subsidies not to grow things. The landed gentry is giving way to corporate behemoths such as Purex, Tenneco, and Kaiser.

The IRA has hired the Los Angeles firm of O'Melveny and Myers, the most powerful law firm in the West, to file an *amicus* brief on the side of the IID in the 160-acre limitation case. The brief is filed in the name of 10 middle-sized landowners owning more than 160 acres. Irvine's name is not on the brief. Just as in 1932, when they got a man owning 200 acres to file a test case, the large growers are disguising themselves behind middle-sized farmers to make it look as if the little man is the one who's fighting the limitation.

Winking at the Border

Comes now Ben Yellen.

First he went on the propaganda offensive. In "Irvine Ranch Deprives Your Children of Opportunity" ("If the young men must leave the Valley to earn a living, then the young women have to leave also because there are no men to marry"), in June, 1967, he counteracted the frequent claim that you can't support a family on 160 acres by pointing out a fact that the IID, IRA, Schurz papers, *San Diego Union* (under managing editor Herb Klein), *Los Angeles Times*, and Floyd Dominy had chosen to ignore—that the law says 160 acres *per person*. A family of four could own 640 acres and, based on current subsidy and profit levels, even family farms of 320 acres would receive $40,000 each.

In "Senator Geo. Murphy is Befuddled" (mailed to every member of Congress), he challenged Murphy's claim that $100,000 in equipment is needed to run a farm. He said several midwestern Congressmen own profitable farms without nearly that amount of equipment and suggested Murphy consult with them.

After Reclamation Commissioner Floyd Dominy's 1967 L.A. *Times* quote, Yellen published a newsletter entitled "Floyd Dominy, Saboteur of the U.S. Reclamation Law." Dominy had said in the article that he owns a 500-acre farm in Virginia and "If I weren't a highly paid government official, I'd have lost it long ago." Yellen points out that Dominy's farm does not get year-round perfect sunshine and a completely controlled water supply for double or even triple crops like Imperial County land. Further, Dominy's farm is in booming Fairfax County in suburban Washington, D.C., where most "farmland" is really being held under low property tax assessments for speculation.

(What Yellen doesn't point out is that Dominy's is a cattle-breeding farm. Cattle-breeding in suburban Washington is almost always a losing proposition unless you happen to be a "highly paid official," in which case you can deduct the cost of raising your cattle against your salary as a current expense, while taking the sale of the animal as a capital gain. Until 1969, you could depreciate your cattle like a car, even while they became more valuable. This has made cattle breeding a very popular hobby in Washington. Mr. Dominy has since resigned as Reclamation Commissioner. How he finances his hobby now, one can only imagine.)

Finally, Dr. Yellen rounded up 123 non-landowners—many of them farmworkers who could not get jobs because the big growers use illegal Mexican labor—and hired a lawyer to file an *amicus* brief on their behalf on the side of the U.S. With friends like Yellen, of course, the U.S. government doesn't need many enemies.

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Annoyed that the government wouldn't add the residency requirement to the suit and infuriated that it was taking so long to come up, he also got his lawyer to file suit in San Diego U.S. District Court against Interior Secretary Walter Hickel, Dominy, and Regional Reclamation Director A. B. West to get them to enforce the residency requirement in the Imperial, Coachella, and Palo Verde Irrigation Districts. He is worried he won't have enough money to continue the suit.

This suit is the most important of Yellen's ventures, for if he wins it (and if a law isn't passed in Congress the next day repealing the very laws on which the suits are based), it could drive out the big growers and totally revolutionize California farming. One Interior official involved in the case admitted, "Interior is scared stiff; we're going all out on this one because if Yellen wins, all hell could break loose."

The government is now in the strange position of claiming the 1902 law *does* apply to Imperial Valley in their suit against the IID, and that it doesn't in Yellen's suit against them. In the second suit, they're claiming that the requirements of the 1902 law do not apply to areas covered by the Boulder Canyon Project Act because this act was passed after a 1926 Omnibus Adjustment Act, which mentions no residency requirement. There is little basis for this assumption. Nowhere does the 1926 act imply it is meant to override the 1902 act. In fact the *Congressional Record*, during the debate over the 1926 act, shows that Senators made reference several times to the provision of the 1902 act. It seems fairly clear they imagined their new act not to replace but to extend the one of 1902.

Meanwhile, of course, nothing is happening with the government's acreage limitation suit. So in September, 1970, Yellen wrote up a letter to the judge supposed to handle the case and printed it up as a newsletter called "Open Letter to Judge Turrentine," in which he suggested that the U.S. District Court at San Diego is becoming the laughing stock of the entire United States judicial system. He said that while he could appreciate that the court calendar was filled with criminal cases, he doubted whether any of them involved the stealing of $50 million yearly. And he complained that all news about the status of the case came from the IID and its lawyers and that while Schurz's Prostituted Press had made a big deal out of the IRA's *amicus* brief, they had never even mentioned his. Yellen mailed this newsletter to every judge and civic leader in San Diego, dozens of prominent lawyers, and every member of the U.S. Supreme Court.

Now, Dr. Yellen has been accused of attempting to take credit for things he simply hasn't done. One long-time Brawley resident said, "If Dr. Yellen came out with a newsletter saying the IID keeps us in darkness, he'd say he was responsible when the sun came up the next day." Be that as it may, 10 days after Yellen's open letter—close to six years after Interior Solicitor Barry's ruling—Judge Turrentine scheduled the 160-acre-limit case and it opened last month.

Convenient Transferrals

The lawsuit and the land and water policies are Yellen's biggest and most complicated campaigns, but what got him going in the first place was the people swindle, the way the growers couldn't resist using illegal Mexican labor, horribly mistreated, to enhance their profit margin one more step. Yellen discovered that Mexican braceros working for the big growers under Public Law 78 were being worked half days and overcharged for their food and insurance, so that even though the law set their minimum wage at 70 cents, they were ending up with weekly paychecks of 25 and 50 cents. And they weren't even getting the insurance for which they paid. So Yellen went down to the labor camps with a megaphone and made speeches to the Mexicans that they could get

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free medical care from any doctor in town and the company would have to pay. He then Xeroxed some of their paychecks and sent them to the AFL-CIO. He was thrown in jail for practicing law without a license, and the medical society accused him of attempting to solicit patients.

The Imperial growers have been taking advantage of Mexicans at slave wages, while depriving Americans of jobs, for years. The U.S. border patrol and Immigration and Naturalization Service have always been willing to cooperate in these ventures. Until 1952, they just turned their backs as thousands of Mexican "alambristas," or fence-climbers, poured over the border illegally. The growers would work them for a week or so, then place an "anonymous" call to the border patrol telling them where the Mexicans were. The government would then come to the labor camps, arrest the Mexicans, and send them back to Mexico before they could be paid. In 1952, the arrangement was made official with the U.S.-Mexico agreement setting up the bracero program. The program was justified by the claim that Americans simply couldn't be persuaded to do the work. "We are willing to pay 50 cents an hour," the head of the Imperial Valley Farmers Association protested in 1959. Once again, when Mexican workers complained of irregularities in pay or working conditions, they found themselves deported back to Mexico. The bracero agreement banned use of Mexicans as strike breakers; but this provision was ignored. If necessary, the local sheriff would deputize the growers and their sympathizers to handle angry American workers.

The bracero program expired in 1964 and, after a long national debate, was not renewed. Since then the operation has become only slightly more subtle. Many Mexicans get three-day passes, supposedly to shop and visit friends. The passes are undated; no record is kept of who enters, where and when. Others sign up as immigrants but really stay in Mexico, using their "greencards" to get across the border every day. These fake immigrants pay no taxes and the selective service never bothers with them. Like their absentee bosses, they contribute nothing to the local economy. This arrangement has proven so profitable for farmers that factories are now cropping up along the border, with big manufacturing companies such as U.S. Gypsum taking advantage of the illegal immigrants. Meanwhile, 15 per cent of the people in Imperial County are on welfare (a statistic well used by the growers when explaining away the high local tax rates). Since 1964, the Immigration Service has opened ports of entry 24 hours a day that were formerly closed from 6 p.m. to 6 a.m. Immigration Service Commissioner Raymond Farrell explained that this was to encourage shopping by Mexicans in American border cities. Statistics on the increase in purchases in these towns between 6 p.m. and 6 a.m. are hard to get, as all the stores are closed during these hours.

Up to 10,000 Mexicans pour across the border at Calexico in the early dawn. There are only two customs inspectors. The men are never checked. Many of them transport marijuana and heroin. Mike, a former labor contractor and friend of Yellen, says their contact on this side is usually the job foreman. Kaiser Aluminum and United Fruit organizing the smuggling of drugs? "The companies don't care about the drug smuggling," Mike said, "as long as they get their cheap labor." Mike says that lately the immigration service has been cracking down somewhat on distribution of greencards and that there is a black market for them, each card going for about $100. Getting a card from the government often takes a bribe as well.

The people swindle led Yellen to a bevy of other scandals There are the subsidy and tax swindles. Local Brawley businessmen are charged a business license tax for their little dental offices or dry cleaning stores, but the

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big, modern offices the growers maintain are exempt.

Versatility

Then there's the electricity swindle. Besides selling water, the Imperial Irrigation District also sells electricity. In fact, it has a monopoly on both. The IID tells its residents, "As a public utility, it is our responsibility to provide your electric power and service needs at the LOWEST POSSIBLE COST." (See IID's "Interesting Facts About Your Utility Pole," prepared in cooperation with the American Wood Preservers Institute of Washington, D.C. It continues, "Your 'silent sentinel'—the efficient, reliable and safe utility pole—is playing a vital role in fulfilling that responsibility.")

Over 99.5 per cent of the IID's water goes for farming, and less than one-half of one per cent to people in towns. The IID uses almost twice the amount of water every year (2.8 million acre-feet) as the entire city of New York. The electricity is just the reverse, most of it going to people in towns, only some to the farms. The growers who control the IID charge outrageous rates to the townspeople for electricity and then give themselves a terrific bargain on the water. Furthermore, the district is using its electricity receipts to pay off the $30 million it owes the government for the All-American Canal—even though the canal has been open and supplying water since 1940 but only started generating electricity in 1958, and even though the IID contract with the federal government states that the canal cost shall be repaid by taxing the land. In 1967, with great fanfare, the IID announced it would stop taxing land, thus saving the people $1.5 million annually. Of course, since 70 per cent of the land is owned by outsiders, this is no great gift to the people of the Imperial Valley, except to the rich growers.

In 1969, the IID was selling electricity to homeowners for $18.04 per thousand kilowatt hours. Since the IID pays out neither taxes nor profits, its electricity rates should be lower than what other companies charge. In fact, the IID's rates are higher, the difference going to subsidize water bills, probably only one-fourth what they should be, for the big growers.

There is a question whether the IID should be exempt from payment of property taxes even as a quasi-governmental institution. The city of Los Angeles pays about $2.6 million in property taxes to the counties of Inyo and Mono in the eastern part of the state for the Owens River dam and aqueduct. Not only does it pay real property tax for the ditches and equipment, but it pays personal property tax for the value of the water stored behind the dam. The IID lists its assets at a book value of $143 million—excluding water—about $12 million of which is cash. Property taxes on the remainder would produce about $5 million. Yellen estimates Brawley should be getting $150,000 in property taxes from the IID—enough to cut everybody else's taxes by 40 per cent.

A Conflict of Interests

On top of everything else, the growers get subsidized on their electricity, too. It is standard practice in the United States to charge more for electricity in suburban areas, where houses are spread further apart, than in the city. But in the Imperial Valley, where one grower's house (or his manager's house) might be surrounded by 10,000 acres of farm, the same rate is charged the growers as the city people. Further, they get some electricity at one-fifth the regular rate, supposedly for pumping water. Yellen claims much of this electricity is misused.

In 1967 Dr. Yellen got support for his cause from the Tennessee Valley Authority, which testified that, as a governmental agency, it charged consumers only $6.78 for 1,000 kilowatt hours of electricity—less than one-third the IID rates. The *Brawley News*

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published this information in four paragraphs surrounded by 13 paragraphs of rebuttal from Robert Carter, the head of the IID, who called Yellen's charges "irresponsible."

Yellen estimates the whole electricity swindle costs city dwellers in the district $14 million a year. Brawley citizens, he figures, lose $2.5 million, which is almost twice that city's annual budget.

As you begin to suspect after a few hours of listening to Yellen's liturgy of vices, the federal government is in collusion on this one, too. Besides failing to enforce its contract with the IID for repayment of the $30 million cost of the All-American Canal, the Interior Department is failing to enforce a provision of the Boulder Canyon Project Act which requires the Secretary of Interior to set rates for electricity produced from projects resulting from the act, in the absence of state action. The IID gets about a quarter of its power from the Bureau of Reclamation, which generates it along the Colorado River. Another quarter comes from the IID's own generating plant along the All-American Canal. This plant, of course, would be worthless without the results of the Boulder Canyon Project Act. Since no California agency regulates electricity rates, Yellen is suing Hickel and friends for "misfeasance, nonfeasance, and malfeasance" for failing to set the rates. This time he's filing in U.S. District Court in Washington "so it will come west over the wires and the L.A. *Times* and the Prostituted Press will have to print it."

The Imperial Valley growers don't care for Dr. Yellen in the least. They have tried everything from press boycotts to professional boycotts (none of the other local doctors will refer patients to him) to election fraud to physical violence to shut him up. In a locally celebrated incident in 1965, Yellen was distributing his newsletters on a school parking lot when he was accosted by the deputy superintendent of schools, who threw him to the ground. Yellen pulled out a pocket screwdriver and started poking at the man until they were separated. Neither was seriously hurt. Yellen was given a three-year suspended sentence for assault with a deadly weapon on a public official. The newspapers and IID officials all mentioned this incident to me when I asked them about Yellen. The growers pretend they don't care about Yellen, but they once tried to hire a full-time public relations man just to combat his propaganda. "I have had every type of reprisal tried against me except some woman coming into my office, tearing off her clothes and claiming I attacked her," the 63-year-old bachelor wrote his lawyer, wistfully.

Man of La Mancha

The saga of Ben Yellen may have a sad ending. For years he has fought alone and managed to survive. But now an OEO-funded medical clinic is opening in Brawley, which Yellen fears will take away all his business and leave him no money for his newsletters and lawsuits. The clinic is supposed to be for domestic migrant farmworkers who cannot qualify for welfare and MediCal, California's Medicaid system. Officials of California Rural Legal Assistance, which was fundamental in getting the clinic in Brawley, have tried to assure Yellen they will do everything they can to see that no MediCal patients—the bulk of his practice—get into the clinic, but he will not be comforted.

In fact, Yellen, in a rare alliance with other doctors and druggists in the area, participated in an effort to get a court injunction to stop the clinic from opening. His argument was that the clinic was costing too much money, and there aren't that many people around the area who don't qualify for MediCal and could therefore use the clinic.

There is also a real difference in approach here between CRLA types and Yellen—the 1960 liberal reformer versus the old-fashioned lone crusader, or, as Yellen puts it, somewhat

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unkindly, "the bleeding heart versus the bleeding pocketbook."

And yet, there is something more here than a mere clash of style—Yellen has acted selfishly and somewhat blindly in the one area where his self-interest has been threatened. Granted, his self-interest is narrowly defined—a cot, a mimeograph machine, and a few lawsuits against the uglier acts of the growers—but here is a case where he feels that somebody else's well-being might work against his own. It is nothing compared to the other side—growers selfishness in grabbing off millions vs. Yellen's selfishness in wanting to pursue his campaign against them. But there is a small sense that the cussedness that causes Yellen to oppose the clinic is the same stuff of which growers' fortunes are made.

Perhaps all societies find ways of channeling such cussedness—the failure of America is that ours is so unabashedly and profoundly exclusive and excessive. The fact that Ben Yellen is such a rarity and the growers are so common proves that. And perhaps, in other societies or situations, Ben Yellen wouldn't feel the need to fight the clinic for the survival of his own aims—other more enlightened societies have attempted to fuse man's ego with that of society as a whole.

But we are a long way from that stage. Before we worry about Yellen-level selfishness, we will need many more Yellens to eliminate the bigger, grosser stuff he is planted so squarely against. Can anyone laugh him off without feeling a little uncomfortable knowing he is standing in the Bank of America parking lot in El Centro handing out newsletters about them—like "Cosa Nostra Bona (Our Good Thing) of California" from 1963:

> We country boys are getting sick and tired of hearing and seeing the U.S. Senate Anti-Rackets Committee give all the television time to the crimes in the big cities like New York, Chicago, Detroit, Philadelphia, Los Angeles, etc. etc. The COSA NOSTRA gets all the publicity
>
> WE HAVE NICE BIG RACKETS IN THE COUNTRY AND PARTICULARLY IN CALIFORNIA AND WE WANT TO GET ON TELEVISION ALSO. OUR CITY COUSINS ARE GETTING ALL THE GLORY. WE WANT SOME. WE ARE TIRED OF HEARING ITALIAN NAMES AS BEING ABLE TO MAKE ALL THE MONEY IN THE COSA NOSTRA. HERE WE HAVE 100% AMERICAN NAMES SIMILAR TO SENATOR McCLELLAN AND CONGRESSMAN GATHINGS, WHICH ARE MAKING BIG MONEY IN THE RACKETS COUNTRY STYLE.
>
> The ancestors of the country boys in our rackets came to the United States a long time ago. Some of them came over on the Mayflower. . . . Their wives belong to the Daughters of the American Revolution. Before they started their rackets in California, they first practiced up swindling the Indians out of their land as they slowly made their way to the Golden Land. . . .

So maybe Ben Yellen is a freak and a crackpot, even though he is a living portrait of many civics book virtues—personal involvement in public affairs, outrage at corruption, and a fighting spirit. But in the real, in the person of a transplanted doctor in Brawley, such attributes are scoffed at—the legions of proper lawyers and mature public servants and respected businessmen who sit back and permit, or help, the growers fleece the country consider that Ben Yellen must be some kind of kook, luckily not dangerous enough to be permanently locked up, but definitely a man to be humored.

Perhaps in Southern California, where swindles are a way of life among the rich, defending old American virtues is considered deviant and insane behavior. Certainly in these days of cynical acceptance, strict and compromising professionalism, and fear of independence, a man who really believes the laws should be fairly applied to all and sees every injustice as worth a personal fight is holding at best an eccentric position. The way they talk about Ben Yellen, the Jewish Don Quixote tilting real windmills in the desert, proves it. ■

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FDA: The Sugar-Coate Polyunrespo Indigestible Placebo

by Richard Margolis

If you ask people for a classic example of American government reform at its best, they will tell you the story of Teddy Roosevelt's victory over the meatpackers. Reform, of course, means stringent laws and a government agency. Both came soon after the publication of Upton Sinclair's book, *The Jungle*—so soon that people were impressed at how American public opinion, aroused by journalism, could combine with responsive government to produce real social improvements. It is almost unthinkable now that one issue could cause such furor, perhaps because we have become so hardened to things going wrong or perhaps because we realize the flimsiness of the great castle of laws and agencies built on all the muck raked up by journalists.

Richard Margolis writes for The New Leader *and* The New York Times Magazine.

In any case, the food industry is still putting out pretty tainted food. The National Academy of Sciences, by way of example, estimates that at least two million Americans suffer each year from salmonellosis, a bacterial form of food poisoning. And the descendant of Sinclair's crusade, the Food and Drug Administration, does little about it. What was the classic example for reform has become the equally classic example of how agencies become platitudinous blobs, extending outward from the very companies they were supposed to control.

Food still has great capacity to arouse a lethargic public. Even Sinclair was surprised when people took the eight or so pages out of his 300-page novel and made them a kind of gastronomic manifesto. Today, the tales of

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chemical additives and paper fish sticks hit people in their most sensitive internal zone—the stomach—and the FDA could count on far more public support for its reform efforts against the industry than could, say, agencies dealing with the duller stuff of housing, traffic, and sound waves.

The FDA has yet to capitalize on that potential support. Consumer advocates see the FDA not as part of the solution, but as part of the problem. Much of its work, in theory, should consist of protecting citizens from the $125-billion food industry; that was what Congress had in mind when it passed the Pure Food Act of 1906 and later the Food, Drug, and Cosmetic Act of 1938. (During the 1930's, the FDA was still a branch of the Department of Agriculture; now it belongs to Health, Education, and Welfare.)

In theory, the agency has remarkably broad powers. It can seize food shipments, secure court injunctions and even compel prosecutions. More important, the FDA is empowered to set food standards, that is, it can tell a producer how many peanuts to put in a pound of peanut butter or how much fish to put in fish sticks. In 1958, the FDA was given new authority to pass on the use of chemical food additives; and in 1966, with the passage of the Fair Packaging and Labeling Act, it was entrusted to enforce "honest and informative labeling" on food packages.

Of course, there are other agencies with jurisdiction in food matters: the Department of Agriculture inspects meats and poultry, the Department of the Interior oversees a portion of our fish supply, and the Federal Trade

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Commission is supposedly alert to false advertising claims. But the FDA sets the manners and morals of the food industry, and its failure to use its power has far-reaching consequences.

Once in awhile, an FDA official admits his agency is incapable of regulating the food industry. Even in the traditional area of contamination, according to an industry spokesman, quoted in James Turner's *The Chemical Feast*, FDA's modest goals of regulation are not met: "FDA's major food objective is to achieve compliance with good manufacturing practices in at least 90 per cent of the industry or industry segments where the potential of microbiological contamination producing disease states in the consumer is the highest. Present compliance levels in this area are estimated to be approximately 65 per cent."

The Iron Triangle

The protection gap today is widening because the new foods, like the people who produce them, have become more abstracted, technical, out of control. The use of chemical additives has increased 50 per cent in the past decade. Many of the chemicals help to preserve the foods; many others merely help sell them. There are chemicals that make oranges look orange, that give cheeses a "smoked" taste, and that endow puddings with a pleasing "mouth-feel." The food industry has swamped FDA's Standards Division with more than 2,500 new products annually, and many of them are synthetic from first to last. We are getting more and more ersatz foods—"grape" drinks that are strangers to the vineyard and between-meal snacks that come straight from the test tube. FOA standards for such drinks, proposed in 1966, are still unapproved in 1970.

You almost have to be a chemist these days to know what you are eating. The gory and bizarre visions of unclean slaughterhouse practices, while they perhaps still exist, have been supplemented by harmful chemicals and pesticides, counterparts of the flies and dirt of the old days, and doubly dangerous because they cannot be so easily identified. The invisible jungle.

Growers of fruits and vegetables now spread about 600 million pounds of poisonous pesticides on their crops each year, and the public relies chiefly on the FDA to make certain these poisons never reach the dinner table. Yet FDA inspectors manage to sample less than one per cent of all interstate shipments of fruits and vegetables.

It has all been too much for the FDA, which employs about 5,000 persons and spends nearly $80 million annually. Only one third of the money goes into food protection; the rest is earmarked for programs related to drugs, cosmetics, and toys. The $28-million food protection budget can hardly be expected to rein in the $125-billion food industry. The agency employs fewer than 660 inspectors in foods and drugs combined. These inspectors are supposed to certify the wholesomeness and quality of food products in more than 50,000 processing plants, warehouses, and distribution centers from coast to coast. The Department of Agriculture—whose jurisdiction is restricted mostly to meat and poultry—employs 14,000 inspectors.

(The meager budget explains to some degree FDA's inability to do its job. But the agency has yet to demonstrate even a willingness to do the best with what it has: during the last 10 years, the agency has consistently not used all the money appropriated by Congress, returning in that period an estimated $7 million to the U.S. Treasury. Infusing the agency with more money will not automatically solve the problem of a moribund outfit that sends back money at the same time it is starving for it.)

Beyond the lack of adequate controls over production, in food research the FDA is the third leg of an iron triangle that entraps the consumer. The food industry and the big univer-

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sities form the other two sides of this elaborate structure. The university benefits from the large research grants given by the industry. The industry, in turn, benefits because the grants can influence the results of the research, and the academic affiliations can add a certain amount of dignity to corporate profit-seeking. This arrangement is more dangerous when you consider that the FDA itself has only meager research facilities and must rely on industry research for its findings. In fact, 70 per cent of today's food standards were initially proposed by the industry.

Few academic institutions of note have remained free from the food industry's influence. Recent contributors to Harvard's School of Public Health Nutrition Department, for example, include the General Foods Corporation ($102,000), the Kellogg Company ($42,500), the Nestle Foundation ($25,000), and the United Fruit Company Foundation ($15,000). Out of such contributions is truth fashioned.

Consider the case of a science professor at an Ivy League college who recently attacked a segment of the food industry for its indifference to nutrition. The professor's dean promptly received a letter from a high-ranking official at the university who also happened to be a director on the board of a large food corporation. The letter warned that the professor's criticism threatened the flow of research grants from the food industry to the university; and he predicted the professor himself would henceforth be boycotted by the grant-givers. (Everyone involved in this melancholy incident insists on anonymity, to protect the guilty. That is part of the game.)

Would You Trust the GRAS?

The FDA's own contribution to these arrangements lies in its seemingly limitless loyalty to the big food corporations and its willingness to forego hearings, relax standards, and even suppress information. Take the case of a recent experiment in Elkhart, Indiana, sponsored by General Foods. Three years ago Indiana University agreed to find out for General Foods whether the presence of certain sodium tri-meta-phosphates in Tang and Kool-Aid would reduce the incidence of tooth decay.

Dr. Joseph Muhler, professor of dentistry, was placed in charge of the experiment, and before long 2,000 Elkhart families—all innocent volunteers—were drinking Tang and Kool-Aid or placebos in a variety of forms, some with sodium phosphates, others without. Dr. Muhler hoped the phosphate-drinkers would show a marked reduction in cavities compared to those drinking the ordinary, commercial forms of Tang and Kool-Aid. This may have happened; the reviews are mixed. What we do know is that some Elkhart dentists began to detect a sharp increase in cavities among their patients. They concluded that Tang and Kool-Aid, especially the presweetened variety, were very rough on teeth, and they complained about the experiment to both Dr. Muhler and General Foods.

Muhler eventually became convinced that Tang and Pre-Sweetened Kool-Aid were producing a remarkable number of cavities in Elkhart. (Dentists there estimate that the number of cavities among the control group—i.e., those using the products *without* sodium phosphates—shot up about 40 per cent.)

As reporters began to ask questions about the Elkhart disaster, Muhler consulted lawyers of the Indiana Foundation, the university's tax-deductible spin-off organization, which had signed the research contract with General Foods. Muhler claims the lawyers advised him to remain silent, although there was nothing in the research contract, he says, that prevented him from making the results public.

"But I'd hate to think what General Foods would do if we got out of line," says Muhler. "I've 30 to 40 mouths to feed in my [research]

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group, and I'm not going to do anything that would endanger them."

General Foods, of course, was not likely to publish the backfired study, although, according to Muhler, it was thinking about offering to pay for all those fillings. That left the Food and Drug Administration—which had been monitoring the experiment from first to last and had all the information in its files—as the only organization in a position to release the findings.

In theory, there should have been no doubt. Here was a consumer protection agency in possession of information which, if publicized, would surely enlighten the consumer. But when a reporter asked Dr. Virgil Wodicka, FDA's director of Foods and Pesticides, for the findings, Wodicka told him, "We have no knowledge of such research." He may have been sincere in his ignorance. Wodicka is a "Foods" man, and the Elkhart files were in "Drugs." This, an official explained, was because the research concerned the mouth and not the stomach. (Wodicka, however, did have a correspondence file on the subject.)

In any case, the FDA now takes the position that the findings on Tang and Kool-Aid contain possible trade secrets (the effects of sodium phosphates on teeth) and therefore cannot be made public. "Sealed in concrete" was the FDA officials's response to a request that the files be opened to reveal the cariogenic effects of Tang and Pre-Sweetened Kool-Aid.

(The FDA's "trade secret" syndrome is used many times to justify its secrecy in controversial matters. Since FDA regulations say that manufacturers may regard some information as trade secrets and request the FDA to preserve confidentiality, and since there are potential fines and imprisonment that can be brought against government officials who let out such secrets, FDA's caution is understandable. But many times, as in the area of State or Defense Department secrets, the rule is used to shield the bungling or the improper, or to protect the guilty.)

The Tang trade secret case is an example of suppressing research results, but in many other cases, especially those involving chemical additives in foods, the FDA has not even done or authorized the research that would evaluate whether the chemicals are harmful or not. Many of these chemicals have been in foods since the 1950s.

Back in 1958, the agency published its notorious GRAS list, a roster of more than 500 chemicals which the FDA insisted were Generally Regarded As Safe. Some of the chemicals have never been adequately tested; a few, like cyclamates, have proven to be far from safe. Nevertheless, the GRAS list has served as the food industry's bible for 12 years—if a chemical is on the list, it is probably in our food. It wasn't until September 1970 that Dr. Wodicka revealed that "the GRAS list is up for grabs." What he meant was that the FDA had signed a contract with the National Academy of Sciences in hopes of learning which chemicals were safe and which were not. (The role of the National Academy of Sciences in FDA affairs is worth noting. One agency critic observes that FDA will act only when a decision involves no controversy. If there is any at all, it will defer responsibility by asking the NAS to study the problem, thereby gaining time and taking the burden of the decision off the FDA.)

Only Your Stomach Knows for Sure

So far, we have dealt only with FDA's moribund efforts to police the potential harmful effects of chemical additives and improper food handling. A newer and equally important area of concern is food nutrition. Until recently, it was assumed both that America was a land of abundance—hunger was rare—and that the small pockets of malnutrition that did exist were the result of not enough food rather than low-quality food.

For years FDA officials, parroting the food industry's own propaganda,

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insisted that malnutrition was a myth fabricated by hysterical do-gooders. "The normal American diet," declared a typical FDA booklet, "includes such a variety of foods that most persons can hardly fail to have an ample supply of the essential food constituents." The fault was not in our food but in ourselves. Given that myth, it is easy to proceed to the notion that supplemental minerals and vitamins are both an affront to private enterprise and a menace to consumers. Not long ago, a ranking FDA official noted that his agency viewed *all* dietary supplementation as superfluous.

Apparently that applies to food as well as to pills. The food industry's occasional attempts to fortify its products with additional minerals and vitamins are usually rebuffed at the agency. A suggestion by milling and baking companies to add more iron to bread has been on the FDA desk for close to a year, and no action has been taken. The agency has a peculiar rule-of-thumb: a product's nutrients must be in proportion to its calories. Thus, if a bowlful of cereal affords one twentieth of a person's daily calorie requirements, it should offer no more than one twentieth of that person's daily protein requirements, iron requirements, etc., but many Americans get their calories from fats and sugars—true "empty calories"; the FDA rule, particularly for the poor, guarantees widespread undernourishment.

In the late sixties reformers testified to widespread hunger and malnutrition in the United States. Dr. Arnold Schaefer, Nutrition Program Chief for the U.S. Public Health Service, told a Senate committee last year that malnutrition "occurs in an unexpectedly large proportion of our sample population." He singled out expectant mothers, infants, and teenagers as persons frequently deprived of sufficient proteins, vitamins, and minerals. And the Department of Agriculture, after sampling 7,500 households, reported that one in every five American families was the victim of a nutritionally deficient diet. And not all of these families are poor.

"The American diet has deteriorated in the past decade," according to James Turner's *The Chemical Feast*, a Nader report on the FDA. He goes on to quote the editor of the *Journal of American Nutrition Education*, who held a press conference in 1969 following a three-year nutritional study: "Nutrient inadequacies . . . reach into all income groups and all regions. . . nearly all children under one year of age had iron intake less than the Recommended Dietary Allowance." The study found infants of higher income families to be less well nourished than those in lower income families. Turner also says that in the past decade American life expectancy has not dramatically increased, while that of other nations has. And the U.S. infant mortality rate has grown from fifth lowest in the world in 1950 to 13th in 1968.

In part, the declining American health is due to the poor food supply. While FDA clings to the myth of the bounty of the Earth and has refused to recognize the need for vitamin additives—even those proposed by the industry—food quality has declined. And since more and more people are eating man-made foods, the question of when an apple is really an apple becomes more than a philosophical one. How much fish do you put in fish sticks, how much carrot in carrot sticks, how much orange in orange juice? These are decisions made by food producers, mostly on profit criteria, while the FDA has until recently abdicated its own responsibility in this area by completely ignoring the issue of nutrition in artificial foods.

Hard to Swallow

One of the FDA's first actions in this regard was as recently as September 1970, when the agency signed a two-year $70,000 contract with the National Academy of Sciences (the usual practice) to develop a set of nutritional guidelines for various food

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categories like TV dinners, snacks, and other prepared foods. "The nutrient content of these foods is unknown to the purchaser and now uncontrolled by the manufacturer," the FDA press release noted. "As the use of these foods increases, guidelines covering their nutritional quality are essential to the consumer."

In other words, the agency is saying that the consumer has a right to expect a reasonable amount of proteins, vitamins, and minerals in the food he buys. The guidelines for each product will, presumably, define "reasonable amount." Ideally, the Academy's Food and Nutrition Board, which is conducting the study will go beyond guidelines and suggest a way to put nutrient contents on food-package labels. The consumer needs to know both what nutrients he requires and which nutrients he is buying. But the FDA contract does not specifically call for recommendations on labeling, although FDA is toying with establishing voluntary labeling standards in its own shop.

One thing the contract stipulates is the selection of a committee "made up of individuals in the fields of nutrition, medicine, food sciences. . . and food marketing" to develop the nutritional guidelines (the Academy has appointed a six-man committee from industry and academia). Despite the FDA's "primary relationship. . . with consumers," it has chosen to exclude consumer representatives from this key committee.

Official rhetoric to the contrary, the FDA officials tend to find their enemies among friends of the consumer. Thus FDA Commissioner Charles C. Edwards could remind an audience that "we are a consumer protection agency and our primary relationship is with the consumer," and then proceed to attack the consumers' most famous ally. "Our major problem at the moment," Dr. Edwards complained, "is to get the Ralph Naders. . . . to leave us alone. . . ."

More alarming, perhaps, is the feeling around FDA offices that whatever nutritional guidelines the committee eventually recommends should not be binding upon the food industry. The word one hears most often is "voluntary," and voluntary guidelines may be precisely what the industry wants—something they could publicly cherish but need not obey.

There are plenty of recent examples not only of industry indifference to self-policing, but of its open opposition to FDA regulation. An HEW report by an environmental and health task force headed by Ron Litton said:

> In 1965 a total of 711 firms suspected of producing harmful or contaminated consumer products refused to let the Food and Drug Administration conduct inspections. Some 515 refused to furnish quality or quantity formulas to the Administration: 26 denied the Administration the opportunity to observe a manufacturing procedure. And 153 refused Food and Drug Administration personnel permission to review control records.

It is unbelievable that the new regulators, knowing the history of not only failure to voluntarily clean up the food industry, but the deliberate attempt to distort, circumvent, and evade the law, could seriously entertain the idea that somehow, in 1970, things are different, and the industry is, all of a sudden, ready to sacrifice profit for the sake of America's digestive system.

But that's exactly what they are entertaining, these new regulators. "If the industry itself does not maintain the quality and safety of the food supply," says Dr. Wodicka, "we can't." James D. Grant, deputy commissioner, points to "voluntary compliance" as "one of our top priorities"; and the number of FDA-initiated prosecutions of alleged lawbreakers in the industry has dropped sharply—from 201 in 1966 to 45 in 1969, and not, assuredly, because the industry has suddenly seen the light. This drop is due in part to FDA's abandonment of the old practice of prosecuting small food outfits. The

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big ones are either too powerful for FDA to successfully challenge, or too clever to let a dispute get to that stage.

Starvation at FDA

At FDA, one gets the picture of an agency that is beleaguered by problems but keeps denying it has any. "We are a grossly underfunded and understaffed agency," says an FDA official. "But if you quote me on that, I'll deny it." His coyness reflects in part the fact that bureaucratically it is impossible for an agency to admit that it is starving to death—and in part the FDA's traditional reluctance to seem ungrateful to Congressmen for their niggardly appropriations. Better half-dead than ill-bred, the agency seems to think.

Whatever the reasons for FDA's stoicisms, it encourages the illusion among consumers that they are getting ample protection, and probably hampers whatever reform movements are happening outside government to try to make up for what government doesn't do.

Another incredible effect of the FDA's minimizing its inability to cope with the food industry is the fact that the industry seems to expect that it does not have to self-regulate because there is a federal agency set up for that. Thus, while FDA pushes voluntary compliance by industry because it has neither the power nor the means to do otherwise, the industry rejects voluntary compliance because there is a big brother already watching. So nobody watches.

And this attempt to deny what you think is true creates a kind of institutional schizophrenia—the world inside the agency, where people complain that their hands are tied and that they are powerless, and the world outside, where they frantically seek scenarios in which to demonstrate their control and power. This duplicity means that FDA officials rarely indulge in public candor, and when they do, nobody knows quite what to make of it. Thus, when Herbert Ley, Jr., the agency's outgoing commissioner, declared last year, "What the FDA is doing and what the public thinks it is doing are as different as night and day," it was not at all clear what he meant. Could he have been referring to cyclamates? After all, it was his announcement on cyclamates, back in 1968, which reassured the public. Reports linking the use of these synthetic, non-caloric sweeteners to bladder cancer, the commissioner had declared, were greatly exaggerated; there was no cause for alarm. But in making this announcement, Dr. Ley wrote off a mountain of contrary evidence which had been piling up in FDA files for nearly two decades. And less than a year later, of course, the agency banned cyclamates.

What's for Dessert?

FDA's inability and unwillingness to prosecute the big companies has left it bored and unable to justify its existence. To make up for that, it has turned on the easy targets. A kind of Gresham's law, in which the easy causes drive out the difficult ones, has long been at work in the agency. This of course, has counterproductive results—attack the small companies and vitamin supplement producers, and they merge with larger companies, where immunity from FDA is better established. This ultimately unifies and strengthens the big industry monopolies, making FDA's job of policing just that much harder and leaving the consumer with fewer real choices.

In 1966, at a Senate subcommittee hearing, the following exchange took place between Senator Edward V. Long and Kirkpatrick W. Dilling, a Chicago attorney who had represented numerous small businesses in their quarrels with the FDA:

> Senator Long: Did you notice a tendency on the part of the Food and Drug Administration to spend a great deal of their time going after the little manufacturer rather than after some of the large ones?
>
> Dilling: I have definitely noticed that. I

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noticed something else: when a small company is subsequently purchased by a large company, the needling attacks on niggling violations stop.

Senator Long: The merchandise becomes all right then?

Dilling: Becomes sacrosanct.

FDA officials are quick to deny such charges. "We don't concentrate on the small fish; that's total nonsense," says L. L. Ramsey, an FDA attorney in Washington, D.C. On the other hand, "We will not let quacks operate with impunity. . . ."

The FDA's definition of "quacks" is rather broad. It seems to encompass most manufacturers and sellers of health foods, vitamin pills and other supplemental nutrients. At present, for example, the agency is trying to prevent a small vitamin firm in California from distributing bioflavonoids, an ingredient found in citrus fruits and thought by some scientists to enhance the action of vitamin C. (In England bioflavonoids are known as vitamin P.) The agency takes the position that people can get all the bioflavonoids they need from foods in the supermarket; *ergo*, supplemental bioflavonoids should be banned.

The FDA has been wrestling with proposed vitamin regulations since 1962. The long bout reflects FDA's astonishingly dogged resolve to wipe out "food faddists" and "health nuts." (Most vitamin manufacturing firms are small and vulnerable; the bigger ones make many other kinds of products, and would be relatively unhurt by the new regulations.) The FDA's antiquated insistence that food from American land contains all the nutrition people need would now be considered the observation of a food faddist, and yet that view, a holdover from the 1930s, still persisted through the vitamin hearings, and to some degree exists today in the FDA.

The key regulation proposed by the FDA would require that each vitamin bottle be labeled to "inform" consumers that they are already getting all the vitamins they need from their daily foods. In other words, the vendors would be made to state that their produce was useless.

The vitamin hearings, recently concluded, lasted 18 months and generated 25,000 pages of testimony. Meanwhile, more important matters at the agency were getting short shrift. One reason is that the agency has only two hearing examiners. The rule is that if anyone files objections to proposed FDA regulations, a hearing must be held. On the other hand, as Turner points out in *The Chemical Feast*, "No public hearing was called when over 70 persons sought to oppose the. . . regulation allowing Coca-Cola. . . and Dr. Pepper to add caffeine to their products without declaring the fact on the label . . . . Thus the FDA quietly promulgated a regulation allowing deceptive labeling."

Some mention must be made of internal FDA bureaucrats who have tried, in small ways, to get the agency to reform itself. In the last year their attempts have been aided by the fact that the FDA, because of the cyclamate issue, the long, wasteful vitamin hearings, and the growing awareness of consumer advocates, has come under fire. But the reform efforts are of the iceberg variety, and the people involved will complain of the great sea of problems, political pressures, industry pressures, inadequate funding, unenforceable guidelines, that swamp them as they reach below the surface level of administrative improvements.

It seems that the FDA, empowered to protect us from the perils of the food industry, needs protection itself. Perhaps consumers could form an Agency Protection Foundation (APF) to which federal administrators could bring complaints of undue pressures. APF hearing examiners might slap Coca-Cola on the wrists whenever it bullies the FDA, or tell General Foods to let frightened FDA officials open up those embarrassing Elkhart files.

Ask not what the FDA can do for you; ask what you can do for the FDA. ■

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BOOKS:

The New Fatalism of the Young

A Review by John Rothchild

Boundaries by Robert Jay Lifton
Random House. 113 pages. $5.95

There is a tendency these days for older people, especially if they happen to be on the Yale faculty, to interpret the youth. Whether their conclusions tell us more about the modern and diverse dilemma of faculty authors, or of the students under study, is uncertain. In any case, the involved Consciousness III students who took Charles Reich's course presumably weren't the alienated, uncommitted ones who studied, and were studied, by Ken Kenniston. And the student, or students, who made up John Hersey's main character in his college novel *Too Far to Walk* (the one who loses himself but regains maturity after taking an LSD trip and dreaming he is in Vietnam with his father as platoon leader) weren't around May Day when Hersey wrote *Letters to the Alumni*. It is not known whether Hersey's students, the Alienated group, or the Consciousness III group ever made it over to Robert J. Lifton's psychology class, where the Proteans and the Nuclearists are enrolled.

All of these character traits come to have application to our time, but it is never certain whether we begin to see them in ourselves and others because they are there or because the Yale faculty says they are there. In Lifton's case, the two ideas recently distilled from massive and sometimes brilliant research on the attitudes of Hiroshima survivors, students, and the Chinese revolutionaries, have a transcendental power and have stuck in the information stream for months. Whether they correspond to reality, or create their own, or both, the Protean man and Nuclearism ("the passionate embrace of nuclear weapons. . . a secular religion, a total ideology in which grace, the mastery of death, is achieved by means of a new technological deity") have had significant impact. Lifton has made us victims of Hiroshima, unsure of our world (without boundaries, hence the title of this series of lectures) and humbled before the technological bomb-god.

My own hunch is that the bomb-god is more a solution for people of Lifton's age than for the young, because the latter weren't yet conscious when Hiroshima happened. For the American adults who lived through Hiroshima, the bomb is a personal and moral dilemma. Lifton's bomb-god in some sense solves the dilemma, because if the bomb itself is all-powerful and self-determining (a

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deity), then responsibility is lessened for those real human beings who decided to drop it. For those of my generation (25) and younger, Vietnam is the moral problem, although no god has yet been developed to diminish it—except the System.

More important than dealing with the guilt of Hiroshima, the bomb-god may be based on some desire to substitute a fixed and mandatory technology for the dying God and forces of nature that no longer hold up to man's advances. Lifton has presented the belief in the bomb as a problem, but seeing things in that light may be less of a problem than dealing with the deeper pain of relativity, the growing awareness that no form, technological or spiritual, is worth believing in.

In fact, the belief in technology is an antiquated one—corporations these days are struggling against a growing and new public knowledge that technology isn't immutable like nature, and that industrial products are not, as they once were, beyond human questioning. Our real dilemma is not prostration to the bomb-god, but technical atheism, as evidenced by our changing attitudes toward automobile accidents.

Auto accidents were once viewed as random events caused by a mixture of fate, bad luck, individual human error, and statistical probability. The "natural" state of the car itself, made of cheap metal easily crushed on impact and hence dangerous, was rarely questioned—the car's construction was taken for granted, accepted, a given condition, an unalterable fact of environment. Accidents were "caused" by individual flaws of drivers and were described as isolated events in which separate people were responsible. The very inviolability and invisibility of auto manufacturing provided the driver with the illusion of free will—it was he who made the decision to drive and he who was responsible for his own death in an accident.

More recently, however, we have begun to view highway deaths as accidents by "design"—the logical and direct result of automobile companies motivated by profit not to spend money on safety features. These deaths are as sure as perennial Aztec sacrifice, caused not by the drivers' own actions but by the fatalism of a corporate decision. The structure of the car, then, is no longer seen as a given condition of life, a divinity as it were, beyond the control of man. It is completely arbitrary, mutable, and unnatural—the product of boardroom whimsy.

The auto example is just one illustration of a new awareness of the artificial state, a knowlege that nothing has to be the way it is. This makes for discovery of great evil in society, not because things have actually gotten worse, but because the supports on which our goodness once depended have all been removed, technological god included. For the first time in history, we have no way to justify poverty or oppression or war, because all the imperatives—God's will or natural laws or ideological "facts" of life—are discarded as having only relative importance (one man's conviction is another man's death). Never before has poverty or disadvantage been such a psychological and moral problem for the affluent and advantaged, or war such a problem for the victor. As power and responsibility for events move away from outside forces to man, as we break away from any notion of cultural determinants or unquestioned qualities (like "war is hell" or "women are women") we are left with nothing on which to justify behavior. This is an age of manipulation, where no fact or being springs of necessity, but of choice.

The death of belief and a distrust of ideals or abstractions is reflected in our vocabulary, which has gotten so specific, limited, and afraid. Rarely do you see words like honor, reverence, pride, respect—except in mocking irony or in political and military propaganda. Values have given way to facts. The goals of action are not

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ideals but rather measured quantities of matter (today's GNP is yesterday's democracy, today's body count yesterday's heroism). The observer, like primitive man, can easily resort to reporting the facts nearest his eyes, without context or higher purpose, just whirring the cameras with lens open, but even the facts themselves take on an ethereal and unreal air in an age of supposed precision. Facts no longer have an independent life of their own—they are seen as products of whatever political persuasion produced them. The reader does not ask, "What were the facts?" but rather, "What was the bias of he who provided them?" There is no way to wholly believe in anything.

Curiously, we shrink from the challenge of our age. We seek solace in technology, or in the natural world we have already defeated. (Technology and nature, though supposed enemies, seem to provide man the same necessary feeling that something controls him.) We talk these days of *conserving* nature, forests, animals, authenticity, and yet our efforts toward those ends comprise the same wistful nostalgia that was used to argue for Indian reservations in the 19th century. There is irony in isolating and protecting, through planning, an aspect of life that once represented power over man and freedom from his planning.

Moreover, as our ecologists and nuclearists predict holocausts, visions that nature will reassert itself and punish us for ruining the purity of rivers, trees, and air (some people predict, rather hopefully, that California will fall into the ocean for its sins, or that the bomb will reduce us to dependence on nature's fate), the greater fear is that we really *can* control nature, that we will someday fashion an entirely artificial world to replace it. While we know that artificial, or man-made, controls—over pollution, population, and society—are the only way to save the world from self-destruction, we shrink away from self-manipulation and dream of a more natural, uncontrolled state. The

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real problem of the artificial world will be people's consciousness that it is artificial and could have been built some other way.

This brings us to man. Lifton calls him Protean—the god of forms—who could appear as a lion, bear, person, bird, tree—continually floating in and out of lifestyles, yet never able to commit himself to any one of them. The Protean idea applies well enough to our country—as Nichelson and Orr brilliantly document in their book *The Radical Suburb,* through the middle-class dabbler who takes up causes and just as quickly and unpredictably abandons them.

People travel from city to city and find it impossible to live in any one place. People travel from job to job and find it is not good to work at any one thing. People travel from idea to idea, flirting with commitment, but abandoning it at the moment of real choice—seeking another cause through which to forget themselves momentarily. Anything permanent—like child-rearing—has a death-like final sentence about it.

We say we seek commitment, we are the activist generation, but our actions belie this desire. What we do seek is the appearance of commitment, the people who are attached to life-long endeavors or crusades are the object of fascination and some envy, but also the negative feeling that they are not the whole truth. The actor is an obsession with us (the President is sold) because the actor is somehow freed from the consequences of his role—he is not his role and therefore is never personally involved. We say the selling of the President was the result of technology, but this is bomb-godding it to perfection—politicans throughout history have sold themselves through images. At this point in time, we are aware of such image manipulation because there is nothing to legitimize any particular image and call it authentic. Authentic men are those who are not yet aware they have choices.

The Protean condition is the heart of the modern dilemma, because at the same time man has the exciting possibility of freeing himself from the hazy clouds of belief that held him captive to institutions or modes of life, he is losing the capacity to sustain a belief in himself and his own ideas. Thus, while there is plenty to reform, it is hard to find an ideal from which to bring reform, or from which to reference it. For if conditions are no longer "natural," neither are ideas or convictions. There is no certainty for the children of Einstein, and today's cultural norm is tomorrow's pathological deviation, yesterday's insanity is today's status quo.

There is irony in the fact that when man was more manipulated (the auto case) he didn't know it and felt free in relation to the large part of his condition that was given and unchangeable, but now that he is more aware that the condition itself is manipulated, he is more conscious of being a slave to it. The manipulative effect brings a changing quality of freedom. I doubt that there is now less "freedom" in America than there was in past decades, but whether that is true or not, our cries for freedom today are based on a new definition of the word. Before, freedom was a contractual arrangement, a legal structure that permitted certain acts and thoughts by men already thought to be basically free—if society would permit them to express it. Today, however, since no cultural form is necessary, the new definition of freedom says that any cultural mold is inherently restricting and oppressive, and society therefore is always unfree. The process of upbringing, which was always relative, was once thought to be natural, but now we see it has artificially defined boundaries, which we fight against. Education isn't worse than before, but because we know it teaches only certain cultural patterns, it becomes "murder in the classroom." Society is strained because, like the automobile, it is not seen as a necessary and fixed condition. Freedom is liberation, truth is only found

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in a short, pinpoint moment of passion, when the conflicts can be forgotten.

These problems are not completely new to society—there is some evidence to suggest that we have become Latin-Americanized—continually making superficial revolution in character and in ideas to avoid the awareness that things underneath don't really change. Octavio Paz's book, *The Labyrinth of Solitude*, written in the 1950s, about Mexican character, seems oddly the most detailed description of the American character today—Protean yet empty, fatalistic yet in power, unchanging yet out of control. At the same time our age is precise and impersonal, there is an explosion of the imprecise and personal—man spinning off gyro on a collision course with destiny.

"People can't admit it," says one congressional staffer, "but nobody has any idea of what is going on anymore. Senators don't know how to control the government. Nobody, not even presidential advisors, has the foggiest idea how to manage the economy. The bureaucracy is unintelligible. People may set up scenarios to act as if they still have control over events, but the government is powerless to control itself or its creation."

Even our crusades take on a Protean lilt. There is a cycle of crises that have taken the place of change in this country. We adopt a new one each year or so—ecology being the most recent—in the name of immediacy and urgency, and yet the sense is that each crisis, besides being a problem, is also an escape from the morass of other past problems that are now considered insoluble. New problems provide the hopeful chance to start over again. They promise, like Protean man, a new role in which to disguise the central, largely immobile world from which all such problems emerge. Thus, there is something almost hopeful about the Earth Day rant, a hope that once attached itself to Civil Rights and Vietnam, long since abandoned in

The Washington Monthly BOOK AWARDS

The Washington Monthly **wishes to recognize the best of those books that explore the processes and values of the institutions that govern America, the books that share our purpose of identifying where the system breaks down, why it breaks down, and what can be done to make it work. The awards will be for books published during 1970 and will be announced in a special Political Book Supplement in the March 1971 issue of *The Washington Monthly*. The award will be $1,000.**

The panel of judges will include Murray Kempton, Townsend Hoopes, author of *The Limits of Intervention*, James C. Thomson, Jr., formerly of the White House and State Department staffs, now teaching history at Harvard, and Mary McGrory, nationally syndicated political columnist of the Washington *Evening Star*.

Publishers and readers should submit nominations by January 15, 1971 to: Book Awards, The Washington Monthly, 1150 Connecticut Ave., N.W., Washington, D.C. 20036.

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those cases. The hope implies quick changes, a fresh vantage point, a new slate. With the passage of time, however, each new crisis gets surrounded and mired in the same dissension, apathy, and confusion as the older ones, but instead of staying around to work through it, we move to something else, seeking momentary respite from the futility of it all, pursuing each problem to the point of commitment but not beyond. This effort has short-term psychological benefits, but it also has long-term diminishing returns.

The interest span per crisis also seems to be decreasing, as is the interest span in artistic movements, or cultural style changes. It takes less time to travel from the initial euphoric promise of action (what *you* can do to fight pollution) back down the road to a rediscovery of the system through this fresh vantage point (as long as society is structured the way it is, meaningful change cannot be made). The result of all of this is that individual action is repeatedly discouraged, and the growing sense is that nothing will be solved until everything is solved, hence, out of this promise of change, the new fatalism. For while Protean man is born, he is born in a world that seems unmoving, fatalistic. The heroes are giving way to martyrs—Seale, Hampton, Hoffman, Leary—who do not move society so much as they are victimized by it. People seek cleansing and redemption, rather than progress and reform.

Lifton's vision—or hope—for the future seems more optimistic and precisely the opposite of fatalism. From Chinese society he sees an emerging new radicalism, a belief in the collective state, and a permanent revolution of men freed from the boundaries of the past, imbued with the knowledge that anything is possible and nothing is fixed. It is an appealing idea to many people in America, and inspires optimism in Charles Reich's followers.

To me, the permanent revolution is an empty promise. Men who are freed from constraining beliefs are not likely to believe for long in the collective state, which is just one more arbitrary form. If man finds new faith, it will have to come from something beyond the total sum of himself, or a mere realization that he is unconstrained.

In fact, rather than beginning to accept a faith in the permanent revolution and continuous social change, the American youth of today seem to be abandoning such faith. The activists of the last few years, pushing from one cause to another with Protean zeal, inspired by much the same ideals that Lifton sees in the Chinese revolution, now seem to be returning to a state of apathy and acts of desperation. Curiously, the activism on campus that was expected to grow this year, working for elections and confronting the system, seems stopped.

The apathy could be a short-term condition, but even if activity starts again, my own feeling is that people have not yet found a faith that seems adequate to their lives or that inspires long-term sacrifice. While people talk of the volatile society we live in, the more difficult reality is the new fatalism, which is not like a granite wall that obstructs progress, but rather like an infinite empty space, never possessed by our meaningless social forms.■

Answers to the December Political Puzzle:

U	R	B	A	N		S		S		S	N	O	O	P
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P	O	L	I	C	E		D		E	R	R	O	R	S
	C		D		A	G	I	N	G		E		G	
P	A	T	R	O	L		O		A	N	T	L	E	R
	T		O		T	O	T	A	L		A		S	
I	S	T	W	O		F		N		S	P	A	S	M
N		H		W	I	N	S	T	O	N		D		I
A	V	I	O	N		O		H		E	L	L	E	N
P		R		E	X	T	R	E	M	E		A		T
T	U	D	O	R		E		M		R	E	I	N	S

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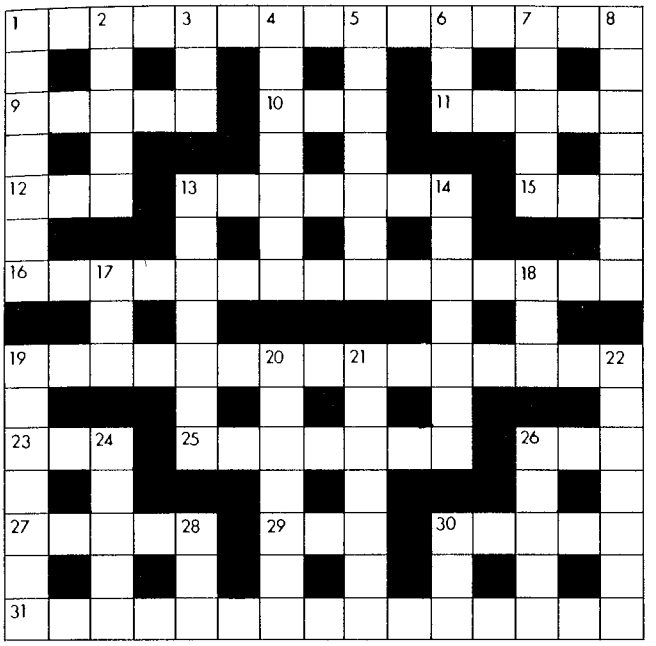
The Political Puzzle

by John Barclay



Across

1. The money flowed after "Fingers" deplaned. (7, 8)
9. Israeli Ambassador shines in Bar Mitzvah celebration. (5)
10. An aye not a nay. (3)
11. Nine Across is smart. (5)
12. Short interest in tin. (3)
13. Done well, it won't leave raw feel. (7)
15. No rest for Red star over Constitution Hall. (3)
16. What batter should keep. (3, 3, 2, 3, 4)
19. Scales are loaded against fiscal goal. (8, 7)
23. She has a use for courts.
25. Ad hoc railroad for fruit. (7)
26. Quaff a drink while coming through? (3)
27. In this river you find uses for everything. (5)
29. Wings are the starting mode of travel. (3)
30. He really lived back in the old days. (5)
31. Men pull, women toy when economy hums. (3, 12)

Down

1. Supply a vase in a fish to fill up house. (7)
2. It costs you to make bed up and turn it down. (5)
3. Dog with two tins on his tail. (3)
4. My ally, too, is faithful. (5, 2)
5. Legumes and insect make him rustic. (7)
6. San Francisco hill includes half of Boston. (3)
7. Grant for India. (2, 2)
8. He often tries to enlarge his authority. (7)
13. Win a toy at the entrance. (3, 4)
14. Wouldn't let men deed away their rights. (7)
17. My gal and Al's. (3)
18. Iron or bronze. (3)
19. Sculptor creates fiendish stabile. (7)
20. Something to shout about in lace mix. (7)
21. If that don't, late lab will! (4, 3)
22. Don't let lisp obscure expression! (5, 2)
24. He tried to give all he owned. (5)
26. Will we see you ever back in show? (5)
28. The bad part comes in the middle of musings. (3)
30. Kind of cell or dock. (3)

The numbers indicate the number of letters and words, e.g., (2, 3) means a two-letter word followed by a three-letter word. Groups of letters, e.g., USA, are treated as one word. Answers to last month's puzzle are on page 64.

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